

**THE NEW JERSEY
DIVISION OF THE RATEPAYER ADVOCATE
ANNUAL REPORT
JANUARY - DECEMBER 31, 2002**

**PREPARED BY
SEEMA M. SINGH, ESQ
RATEPAYER ADVOCATE
AND
PUBLIC ADVOCATE DESIGNATE**



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Governor**

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I. INTRODUCTION

Early in 2002, Seema M. Singh was appointed by Governor James E. McGreevey to serve as Ratepayer Advocate and Public Advocate Designate. In addition to continuing the representation of the State's utility and telecommunications ratepayers in her capacity as Ratepayer Advocate, Ms. Singh responded to many requests from individuals and groups for assistance from her as Public Advocate Designate. Although the Department has not been established as of January, 2003, to the extent possible and feasible with her limited resources, the Public Advocate Designate has provided assistance to many hundreds of requests for assistance that were sent to her by mail, e-mail or telephone. This Report will be sent under separate cover.

In 2002, the Division of the Ratepayer Advocate continued to fulfill its statutory mission as an independent agency, in but not of the Department of Treasury, to ensure that essential utility services including electric, natural gas, water, wastewater, and telecommunications are available to all New Jersey residents, businesses, public institutions and industries at affordable rates. [See Executive Order 001-1994, *N.J.S.A. 13:1D-1* (1994) and *N.J.S.A. 52:27E-50 et seq.*] This mission will be even more urgent in 2003, as legislators and regulators confront the difficult and unprecedented issues associated with the restructuring of the New Jersey electric, gas and local telephone service markets, on both local and reproval levels and the unexpected fluctuations in energy costs in the wholesale marketplace, and the impact of the fear of terrorist activities on our utility and telecommunications infrastructures.

The Ratepayer Advocate represents all New Jersey utility consumers whenever rates and services are being decided before the Board of Public Utilities, or federal agencies, in administrative and court proceedings, and at State and Federal legislative hearings concerning the competitive structure of the electric, natural gas and telecommunications industries. Advocating positions to ensure that the State of New Jersey protects consumers and encourages competition without impairing the financial integrity of energy and telecommunications companies, the Ratepayer Advocate supports the elimination of barriers to entry to New Jersey's competitive markets so that all New Jersey consumers can reap the benefits of competition. Additionally, the office continues to represent New Jersey consumers in traditional rate case proceedings which for the most part currently involve water utilities.

This Report highlighting the Ratepayer Advocate's activities between January and December 2002, reflects the efforts by the Ratepayer Advocate's professional staff to ensure that the interests of all classes of ratepayers are represented whenever the costs and quality of essential energy, water and telecommunications services are being considered.

This report provides detailed discussions of major proceedings in which the Ratepayer Advocate is involved before the New Jersey Board of Public Utilities ("NJBPU" or "Board"),

the Office of Administrative Law (“OAL”) and State and Federal agencies and courts concerning rates and services for electric, natural gas, water, wastewater, telecommunications and cable TV. Listings of materials prepared and public presentations, Ratepayer Advocate participation in state and national utility and telecommunications policy and working groups are also included.

More detailed information about the Ratepayer Advocate’s positions on energy restructuring and water and telecommunications matters can be requested from the Division of the Ratepayer Advocate or can be accessed from the Division’s website at <http://www.rpa.state.nj.us> in English and Spanish.

Respectfully submitted,

Seema M. Singh, Esq.

A. SELECTED LISTING OF PUBLIC PRESENTATIONS BY THE RATEPAYER ADVOCATE AND PUBLIC ADVOCATE DESIGNATE.¹

2002

January

- 8 Op-Ed article - *The Record* "Verizon's Entry into the Long Distance Market" in January 2002 will deter local competition. The time is not right for Consumers"
- 9 Presentation at the **Public Hearing** at the Board of Public Utilities on the petition of Jersey Central Power and Light Company for a Bondable Stranded Cost Rate Order, BPU Docket No. ET99080615, Newark, New Jersey
- 15 Article for *New Jersey Municipalities*, League of Municipalities publication "Lower Cable Television Rates & Improved Service through Municipal Aggregation"
- 28 Presentation before the **Southern New Jersey Freeholders' Association**, on the Atlantic City Electric Company, Conectiv Communications, Inc. Request For Approval of a Merger, Burlington County, New Jersey
- 31 Comments on amendments to statutes affecting municipalities and authorities concerning fire protection systems before the **New Jersey Legislature Assembly Telecommunications and Utilities Committee**, State House Annex, Trenton, New Jersey
- 31 Comments in support of A/S-71 directing the BPU to establish maximum permissible rates for pay phone services before the **New Jersey Legislature Assembly Telecommunications and Utilities Committee**, State Annex, Trenton, New Jersey

¹ Each presentation was provided by the Ratepayer Advocate/Public Advocate Designate, or her designee. This list does not include numerous small meetings and presentations held throughout the year at the request of individual state and municipal legislators, legislative and municipal staff people, representatives of not-for-profit advocacy groups, community organizations and individual ratepayers.

February

- 5 Presentation on how to deal with financial difficulties that affect energy bill payments before the **Center for Women and Families**, Scotch Plains, New Jersey
- 19 Presentation at **Public Hearing** on PSE&G's petition before the BPU to recover \$19 million expended in its Manufactured Gas Plant Remediation program by increasing rates, BPU Docket No. GR01110773, Hackensack, New Jersey
- 21 Comments on local telephone competition and Verizon's application to enter the long distance market in New Jersey before the **New Jersey Legislature Assembly Telecommunications and Utilities Committee**, State House Annex, Trenton, New Jersey

March

- 1 Presentation on "The Importance of Reading," a.m. Roosevelt Elementary School, New Brunswick, New Jersey; p.m. James Madison Primary School, Edison, New Jersey
- 21 Participation in *The Solidarity Seder III: United We Stand*, **Liberty State Park**, Jersey City, New Jersey
- 22 Participation in the **New Jersey Business & Industry Association Joint Meeting with the Energy Council/ New Jersey Pharmaceutical & Food Energy Users Group**, Wyndham-Newark Airport Hotel, Newark, New Jersey

April

- 2 Presentation before a Consortium of Community Groups on the Proposed Role of the Public Advocate, **Trenton Chamber of Commerce**, Trenton, New Jersey
- 4 Participation at the **East Brunswick Indian Cultural Society Meeting**, Zimerli Art Museum, New Brunswick, New Jersey
- 5 Presentation at the **2nd Annual Asian-American "Strength in Unity Gala"** honoring Asian-American Officials, The Palidadium, Cliffside Park, New Jersey
- 6 Presentation to the **Indo-American Senior Citizen's Association**, Hudson County, New Jersey

- 9 Presentation to the **League of Women Voters Linden Chapter** on “*Energy Use: Saving Money Through Conservation*”, Linden, New Jersey
- 9 Presentation at the **Governor’s Reception for New Jersey Clergy**, Drumthwacket, Princeton, New Jersey
- 11 Panelist “*New Rules in a Changing Environment*” at the Spring Law Conference of the **Public Utility Law Section of the New Jersey State Bar Association**, Sheraton Edison Hotel, Edison, New Jersey
- 18 Participation in the **39th Conference New Jersey Conference of Mayors**, Atlantic City, New Jersey
- 20 Presentation at the Sikh Day Parade before the **Sikh Cultural Society**, 41st St. & Broadway, New York City, New York
- 21 Presentation at the **Inaugural of Vaishnav Devi Library/Bookbank**, India House, Newark, New Jersey
- 22 Presentation on recommended revisions to the Electric Discount and Energy Competition Act (EDECA) before the **New Jersey State Legislature Assembly Telecommunications and Utilities Committee**, State House Annex, Trenton, New Jersey
- 23 Participation, **Critical Infrastructures Conference**, “*Working Together in a New World*”, Princeton University, Princeton, New Jersey
- 28 Presentation before the **Garden State Sikh Association**, Gurdwara Bridgewater, Bridgewater, New Jersey
- 30 Presentation on the *Application of the Borough of Butler to Approve a Levelized Energy Adjustment Clause (LEAC)*, BPU Docket No. ER02020065, Borough of Butler

May

- 1 Presentation at the **Public Hearing** on the Filings of the Comprehensive Resource Analysis (CRA) of Energy Programs BPU Docket Nos. EX99050347; EX99050348; EX99050349; EX99050350 EX99050351; GO99050352; GO99050353; GO99050354 and Recommendations on the Statewide Administration of Energy Efficiency and Customer Sited Renewable Energy Programs, BPU Docket No. EX01070447, Newark, New Jersey

- 3 Presentation at the **Dinner Gala Honoring Governor James E. McGreevey** by the Asian Indian Chamber of Commerce, Hyatt Regency Hotel, Princeton, New Jersey
- 5 Participation **Flag Raising Ceremony and Program honoring the Jewish Community in New Jersey**, Drumthwacket, Princeton, New Jersey
- 10 Presentation at the **Public Hearings** on the filings of the Comprehensive Resource Analysis (CRA) of Energy Programs BPU Docket Nos. EX99050347; EX99050348; EX99050349; EX99050350 EX99050351; GO99050352; GO99050353; GO99050354 and Recommendations on the Statewide Administration of Energy Efficiency and Customer Sited Renewable Energy Programs, BPU Docket No. EX01070447, Trenton, New Jersey
- 10 Participation in the **New Jersey State Public Service Recognition Awards Ceremony**, War Memorial, Trenton, New Jersey
- 10 Participation in the **National Asian/Pacific American Heritage Celebration of West Windsor Township**, West Windsor - Plainsboro High School, Plainsboro, New Jersey
- 14 Keynote speaker before the **US Environmental Protection Agency, Region 2** in honor of National Asian Pacific American Heritage Month, EPA Offices, New York City
- 16 Presentation of State Proclamation in Recognition of Honorees at the **New Jersey Citizen Action's 19th Award Dinner**, Newark, New Jersey
- 17 Participation in the Child Advocacy in Challenging Times Conference, sponsored by **Association for Children of New Jersey**, Hilton Woodbridge, Iselin, New Jersey
- 28 Participation in the Fourth Annual Task Force on Diversity Luncheon sponsored by **New Jersey State Bar Association**, Tropicana Casino, Atlantic City, New Jersey

June

- 1 Presentation at the **Cultural Program at the Hindi Mahotsav**, sponsored by the International Hindu Association, West Windsor Plainsboro High School North
- 1 Acceptance award at the **Asian American Heritage Council 2002 Award Dinner**, Sheraton at Woodbridge

- 4 Participation in the **Conference of Council on Gender Parity in Labor and Education**, Traves Hall, Douglass College, New Brunswick, New Jersey
- 7 Presentation on Energy Costs and Services before the **Monroe Township Clearbrook Energy Committee**, Monroe Township, New Jersey
- 9 Keynote speaker, **Jharkand Association of America**, Dangoli, Iselin, New Jersey
- 12 Presentation before the **Mercer County American Inn of Court**, Masonic Temple, Trenton, New Jersey
- 13 Participation in the **Celebration of the New Jersey Legislative Black and Latino Caucus**, Lafayette Yard Marriott Hotel, Trenton, New Jersey
- 20 Presentation before the **Indo-American Lawyers Association Meeting**, SHAAN Restaurant, New York City
- 21 Participation in the 28th Annual Luncheon Meeting, **National Association of Water Companies**, Forsgate Country Club, Jamesburg, New Jersey
- 27 Presentation at the **Essex County Award Ceremony of the Local Talk Day Essay Contest Meeting**, Newark, New Jersey
- 28 Panel Presentation, **New Jersey Business and Industry Association Conference "Energy Choices and Opportunities"**, Sheraton at Woodbridge, Iselin, New Jersey

July

- 22 Participation in **Governor McGreevey's** inauguration of the *"Celebrate New Jersey, Tour of the State,"* Atlantic City Convention Center, Atlantic City, New Jersey
- 25 Participation in the **Federation of Indo-American Seniors Association of North America Senior Conference**, Royal Albert Palace, Fords, New Jersey
- 29 Presentation on energy issues before the **Senior Center**, Fort Lee, New Jersey
- 30 Panelist at the **Festival of India**, sponsored by the India American Cultural Association, Inc., Atlanta, Georgia
- 31 Keynote Address at the **2002 AKKA World Kannada Conference Women's Forum**, Detroit, Michigan

September

- 8 Presentation in **Commemoration of India's Independence**, Drumthwacket, Princeton, New Jersey
- 10 Presentation on Basic Generation Service before the **Board of Public Utilities**, Newark, New Jersey
- 15 Presentation at the **BAPS Swaminarayan Hindu Temple at the Lord Krishna Celebration Annual Ladies Program**, Edison, New Jersey
- 25 Presentation at **Public Hearing** on the PSE&G Petition for Approval of an Increase in Electric Rates, BPU Docket No. EO01120832, New Brunswick, New Jersey
- 26 Presentation at the **Public Hearing** on the PSE&G Petition for Approval of an Increase in Electric Rates, BPU Docket No. EO01120832, Mount Holly, New Jersey
- 26 Presentation before the **East Brunswick Regional Chamber of Commerce Annual Installation of Officers and Charitable Foundation Benefit**, East Brunswick Chateau, East Brunswick, New Jersey
- 27 Remarks and Presentation of Governor's Proclamation at the **4A 2002 National Recognition Event: "AT&T and 4A: Building Bridges to Communities"**, Bridgewater, New Jersey
- 30 Presentation at the **Public Hearing** on the PSE&G Petition for Approval of an Increase in Electric Rates, BPU Docket No. EO01120832, Hackensack, New Jersey

October

- 3 Presentation before the **20TH Annual Black Issues Convention, Leadership Council**, East Brunswick Hilton, East Brunswick, New Jersey
- 10 Presentation as one of the honored "Women Making a Difference" before the **New Jersey Women's Political Caucus**, Lafayette Yard Marriott, Trenton, New Jersey
- 21 Presentation at the **Inauguration of Air India Flights between India and Newark Airport**, Newark, New Jersey
- 23 Presentation on "**Protecting Residential and Business Customers in a Changing Energy Market**" to the Eastern European Delegation Concerned

with Energy Issues sponsored by the US Agency for International Development (USAID) and NARUC, Board of Public Utilities, Newark, New Jersey

- 25 Welcoming Remarks, **First Asian American Conference Established by the Governor and the Asian-American Commission**, War Memorial, Trenton, New Jersey
- 26 Presentation when accepting an award at Project Impact's "**Creating A Voice**" **Award Ceremony**, Melrose Hotel, Washington, DC

November

- 4 Presentation on the Hindu New Year, **Diwali Celebration**, Dept. of **Environmental Protection**, Trenton, New Jersey
- 14 Presentation at the **Dedication of the On-Line Programs of the Keyport Free Public Library**, Keyport, New Jersey
- 15 Interview with Radio Host David Matthew, station 101.5 on **Energy Deregulation**
- 21 Panelist, "*Energy Deregulation and Aggregation: A Story of Dollars and Sense*", **New Jersey League of Municipalities Annual Convention**, Atlantic City, New Jersey
- 29 Presentation at the **Fourth Family Convention of the Rajput Association of North America (RANA)**, Hilton Hotel, East Brunswick, New Jersey

December

- 7 Panelist at the **20th Annual Convention of the National Indian American Forum for Political Education**: "*Empowering the Next Generation*", Royal Albert's Palace, Fords, New Jersey
- 11 Presentation at the **Governor's Energy Summit**: "*The Future of Energy in New Jersey*", War Memorial, Trenton, New Jersey
- 19 Presentation at the **Statewide Faith Based Initiative Forum**, War Memorial, Trenton, New Jersey

B. RATEPAYER ADVOCATE PARTICIPATION IN STATE AND NATIONAL UTILITY POLICY, AND WORKING GROUPS AND PROFESSIONAL ORGANIZATIONS

ENERGY

National Association of State Utility Consumer Advocates (NASUCA)² Electricity Committee

National Association of State Utility Consumer Advocates (NASUCA) Natural Gas Committee

FERC

The Federal Energy Regulatory Commission (FERC) is an independent regulatory agency within the United States Department of Energy that

- Regulates the transmission and sale of natural gas for resale in interstate commerce;
- Regulates the transmission of oil by pipeline in interstate commerce;
- Regulates the transmission and wholesale sales of electricity in interstate commerce;
- Licenses and inspects private, municipal and state hydroelectric projects;
- Oversees environmental matters related to natural gas, oil, electricity and hydroelectric projects;
- Administers accounting and financial reporting regulations and conduct of jurisdictional companies, and;
- Approves site choices as well as abandonment of interstate pipeline facilities

When necessary and appropriate to represent the public interest of New Jersey Ratepayers, the Ratepayer Advocate applies for intervention and participates as a party in FERC activities.

² A coalition of state consumer advocates which includes 40 states and the District of Columbia. NASUCA files comments and participates in various state and federal legal matters and legislative processes to advance the perspective of the retail consumer on utility policies.

PJM

PJM Interconnection, LLC is the organization that operates most of the electric transmission grid system in Delaware, the District of Columbia, Maryland, Pennsylvania, and most of New Jersey. PJM's objectives are to ensure reliability of the bulk power transmission system and to facilitate an open, competitive wholesale electric market.

The Ratepayer Advocate is a voting member of PJM with the right to participate in many of its policies and practices including several PJM working groups such as the Generation Attributes Tracking System User Group, the Demand Side Response Working Group, the Public Interest & Environmental Organization User Group and the Regional Transmission Planning Working Group. Our participation in these groups focuses on protecting the rights of New Jersey electric customers whenever PJM establishes any policy or program that affects New Jersey electric customers.

TELECOMMUNICATIONS

National Association of State Utility Consumer Advocates (NASUCA) Telecommunications Committee

WATER/WASTEWATER

National Association of State Utility Consumer Advocates (NASUCA) Water Committee

The Ratepayer Advocate also participates in and monitors the activities of the following state agencies and not-for-profit groups concerned with water issues:

- 1. The New Jersey Department of Environmental Protection, including the following specific Units:**
 - Division of Water Quality
 - Water Supply Administration - Drinking water, water supplies, and wells
 - Division of Science & Research Water Assessment Team - Water quality reports and water quality indicators
 - Freshwater Wetlands Program
 - Dam Safety

- NJDEP Lakes Management Program
- New Jersey Environmental Infrastructure Trust
- Division of Watershed Management

Under the auspices of the Division of Watershed Management, there are 20 Watershed Management Areas designated throughout the state. The Ratepayer Advocate, through attendance at various meetings and periodic review of email and websites, monitors the Division's Public Advisory Committee (PAC) program, and has done so since early 1999. Among the PAC's that are observed and participated in are the Musconetcong Watershed PAC (WMA #1); the Upper and Lower Passaic River Watershed PACs (WMA # 3,4,5); the Whippany River PAC (WMA #6); and others from time to time as circumstances require.

2. Raritan Basin Watershed Management Project

This partnership project between the NJDEP and NJ Water Supply Authority deals with issues affecting the Raritan River Basin. The Ratepayer Advocate monitors the issues that arise, attends public hearings, and interacts with water and wastewater service purveyors about the unique needs of the region.

3. Clean Water Council of NJ

Although the Ratepayer Advocate is not a formal member of the Council established in 1967 to serve as an advisory body to the NJDEP and to improve the Water Pollution Control Program in NJ, the Ratepayer Advocate attends meetings and reviews its work regularly. The minutes of all meetings are also mailed to the office of the Ratepayer Advocate. A subcommittee of the Clean Water Council is the NJ Water Supply Advisory Council, which meets contemporaneously with the Clean Water Council and makes specific policy recommendations to the Clean Water Council for deliberation and transmission to the DEP.

4. Passaic River Coalition and Ten Towns Great Swamp Committee

These two citizens' groups are the watchdogs for the Passaic River, from its headwaters in the Great Swamp, located at the base of the Watchung Mountains in Morris and Somerset County, through the Upper Basin to the Great Falls in Paterson and then through the Lower Basin from the falls to the Newark Bay tidal area. These groups participate in the DEP DWM PAC program described above for WMA's 3, 4 & 5), but also actively pursue their own agendas for protecting all aspects of the Passaic River Basin. Meetings are monitored regularly.

E. The Rockaway River Watershed Cabinet; Whippany River Watershed ACTION Committee

These two groups monitor different tributaries of the Passaic River, and otherwise form the primary grassroots organizations for the protection of their respective waterways. Members of these groups participate in the DEP DWM PAC process with the Passaic River groups and in WMA #6. These meetings are monitored regularly.

6. New Jersey Water Supply Authority

The NJWSA is a source of drinking water and stream flow in the central part of the state, it conducts budgeting, forecasting and other business as a public body with notice, public hearings on rates for the sale of water to utilities and other water purveyors, as well as other water supply and planning issues. Its activities particularly of the Manasquan section are monitored. Current issues include the drought warnings issued in fall 2001 and ensuring security in light of the WTC 9/11 attack.

7. Local Finance Board

Each agenda for each Local Finance Board (LFB) meeting is reviewed, and when circumstances require a representative of the Ratepayer Advocate's office attends all LFB proceedings to represent affected ratepayers.

New Jersey Sustainable State Institute

Because the Ratepayer Advocate had participated in past years in the New Jersey Sustainable State working group we were asked to participate in the working group convened to set up the New Jersey Sustainable State Institute a cooperative venture of New Jersey Institute of Technology and Rutgers University with funding from the state. Its mission is to establish goals and targets and to track New Jersey's progress towards a sustainable state.

Board of Consultants, New Jersey Bar Association, Public Utility Law Section

C. PUBLICATIONS*

CONSUMER ASSISTANCE HANDBOOK: A GUIDE FROM THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE FOR NATURAL GAS, WATER, ELECTRIC, TELEPHONE AND CABLE TELEVISION CUSTOMERS , REVISED SEPTEMBER, 2002*

This Handbook was prepared to provide consumers, residential, small business, not-for-profit, and commercial customers information needed to make informed choices when selecting energy and telecommunications providers in the restructured energy and telecommunications marketplace. It also includes information about water and sewer rates and services, Consumer Bill of Rights, information about the deregulation of the Cable Television industry, and what to do during drought conditions and weather emergencies affecting water and energy services.

FACT SHEETS*

Cable Television Edition: Informed Consumers Make Smart Decisions,
Fall/Winter 2002

Telephone Edition: Telephone Services Update, Winter, 2002

Water Edition: Current Water Issues, Winter, 2002

Energy Edition: Current Energy Issues, Winter, 2002

NEWSLETTERS*

Vol. 2 No. 2 **Consumer Chat,** Fall/Winter 2001/2
Vol. 2 No. 1 **Consumer Chat,** Spring Edition 2001
Vol. 1 No. 4 **Consumer Chat,** Fall/Winter 2000/1
Vol. 1 No. 3 **Consumer Chat,** Summer Edition 2000
Vol. 1 No. 2 **Consumer Chat,** Spring Edition 2000
Vol. 1 No. 1 **Consumer Chat,** Winter Edition 2000

*Available on the Ratepayer Advocate website at www.rpa.state.nj.us

II. ENERGY

A. INTRODUCTION TO ENERGY RESTRUCTURING

New Jersey Enacts Comprehensive Energy Restructuring Legislation -- *The Electric Discount And Energy Competition Act, P.L. 1999, C. 23*

In mid-September 1998, the New Jersey Legislature introduced comprehensive legislation that restructured the monopoly electric and natural gas industries in the State. Two identical bills [(Senate Bill 5 (S-5) and Assembly Bill 10 (A-10)], drafted by the Board of Public Utilities (BPU or Board), contemplated full retail competition by mid-1999 and 5% rate reductions for all electric utility customers by August 1999 with a 10% rate reduction by August 2002. Legislative hearings on the bills commenced in October 1998.

The Ratepayer Advocate prepared comments and amendments to the legislation that were distributed to the Board, all stakeholders, the Governor's office, all state representatives, and the Office of Legislative Services.³ Although the Ratepayer Advocate supports retail customer choice, there was concern about some aspects of the introduced legislation and its impact on small end-users such as residential, small business, and not-for-profit customers. The Ratepayer Advocate's proposals were crafted to provide all energy customers tangible, long-term benefits from retail competition through lower rates, improved technology, new products and services, and continued reliable electric and gas service.

After extensive legislative hearings through the end of 1998, and review of several revised versions of the bill, P.L. 1999, C. 23, the *Electric Discount and Energy Competition Act* (Act or EDECA) was signed into law by Governor Whitman on February 9, 1999. The main provisions of the Act include:

- Retail competition for 100% of all electric customers to begin on August 1, 1999, and for all natural gas customers on December 31, 1999.
- All investor-owned electric utilities were required to reduce their rates (from April 1997 rate levels) by at least 5% by August 1, 1999 and by at least 10% by August 1, 2002. These rate reductions must be maintained for at least four years.
- Utilities had the opportunity, but no guarantee, to recover non-mitigatable stranded costs. Securitization was capped at 75% of allowable stranded costs. The exact level for each utility was determined by the Board.

³The complete text of these comments and amendments are available on the Ratepayer Advocate's Web site at <http://www.rpa.state.nj.us>.

The Act included several elements suggested or supported by the Ratepayer Advocate:

- Municipal aggregation was permitted, subject to regulations adopted by the Board. (However, while the Act allows either “opt-in” or “opt-out” aggregation programs, the “opt-out” provisions were unnecessarily complicated and, in effect, deterred aggregation.) Currently, the Ratepayer Advocate is working with the Legislature and the Board to amend this section of EDECA.
- The Act was the first in the country to require the regulatory commission to establish explicit shopping credits for each electric utility to spur retail competition, subject to adoption by the Board.
- The Act required the Board to develop affiliate standards via rulemaking.
- The Act established provisions for the adoption of a Universal Service Fund for the benefit of low-income ratepayers and other social programs. (See section entitled Universal Service Fund Proceeding for a more detailed discussion)
- The Act required the Board to establish Comprehensive Resource Analysis Programs for the State’s electric and gas utilities. The “CRA” programs must implement energy efficiency programs and renewable energy projects in the State.⁴ The annual statewide funding was to be \$128 million, allocating 75% to energy efficiency programs and 25% to renewable energy projects.

Efforts are currently underway to amend the municipal aggregation provisions of EDECA. As of January 2003, the Ratepayer Advocate is reviewing what other amendments to recommend in the best interests of state ratepayers.

⁴ In 2002, the BPU changed the name of the CRA program to the New Jersey Clean Energy Program.

B. A BRIEF HISTORY OF THE ELECTRIC & NATURAL GAS PROCEEDINGS UNDER THE ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT (EDECA) TO DATE

PUBLIC SERVICE ELECTRIC & GAS COMPANY STRANDED COSTS, UNBUNDLED RATES AND RESTRUCTURING PROCEEDINGS, BPU Docket Nos. EO97070461, EO97070462, and EO97070463.

On March 18, 1998, administrative hearings concluded regarding the calculation of stranded costs and determination of unbundled rates for PSE&G. The Division of the Ratepayer Advocate presented a comprehensive critique of PSE&G's proposal and offered an alternative plan that would have resulted in greater savings to customers and a quicker realization of full retail competition for all stakeholders. The Initial Decision by the Administrative Law Judge issued on August 17, 1998, adopted many of the Ratepayer Advocate's recommendations.

Hearings on generic issues in the Restructuring Docket were held before the Board, with extensive briefings by the parties to the Board. Additionally, the Board asked the parties to attempt to settle the restructuring cases, which resulted in two settlement proposals to the Board. On March 17, 1999, one settlement proposal was filed by PSE&G and several intervenors in the form of a Stipulation. A second settlement proposal, "The Better Choice Proposal," was filed on March 29, 1999 by the Ratepayer Advocate and several other parties in the case. Comments to the competing settlement proposals were submitted to the Board by interested parties on April 5 and April 7, 1999.

After consideration of the two settlement proposals, the Board issued a Summary Order on April 21, 1999 and a Final Order on August 24, 1999. The Board did not accept either party's settlement proposal in its entirety. The Board accepted the rate reductions outlined in PSE&G's proposal, with some minor modifications accelerating the pace of the rate reductions, resulting in a rate reduction for year 4 of 13.9% for all rate classes, as was required under the EDECA. Thus, according to the timelines established by the Board, rate reductions were set at 5% on 8/1/99; increased to 7% on 1/1/2000; increased to 9% on 8/1/2001; and finally, 13.9% on 8/1/2002. The Board responded to the concern expressed by the Ratepayer Advocate in its Better Choice proposal of the possibility of a precipitous rate increase in year 5 by ordering the Company to file, for Board review, no later than August 1, 2002, the proposed unbundled rate components that the Company would implement at the end of the transition period on August 1, 2003.

As to stranded cost recovery, the Board provided PSE&G the opportunity to recover up to \$2.940 billion (net of tax) in generation-related stranded costs, through securitization of \$2.4 billion and an opportunity to recover up to an additional \$540 million through a market transition charge (MTC) during the four- year transition period. Thus, the approved level of stranded cost recovery was approximately \$135 million less than PSE&G had proposed in its Settlement Stipulation, and approximately \$1 billion less than the \$3.9 billion the Company had originally sought in its initial petition. The Board also ordered that the overrecovery of the LEAC as of July 31, 1999 (estimated at \$60 million net of taxes) would be credited to ratepayers as an additional stranded cost offset, adopting one of the Ratepayer Advocate's recommendations in its Better Choice proposal.

(See discussion of PSE&G's restructuring and securitization petition and related appeals, below).

I/M/O THE PETITION OF PUBLIC SERVICE ELECTRIC & GAS COMPANY FOR A BONDABLE TRANSITION COST RATE ORDER IN ACCORDANCE WITH CHAPTER 23 OF THE LAWS OF 1999, BPU Docket No. EF99060390

On June 8, 1999, PSE&G filed a request with the Board to securitize \$2.4 billion (net of tax) in stranded costs, plus transaction costs aggregating \$125 million, through the issuance of Transition Bonds. PSE&G also requested recovery of the taxes related to the utility generation stranded costs through the imposition of a separate tax component in the MTC, referred to as the MTC Tax. PSE&G requested that the Board act expeditiously on this Petition, so that Transition Bonds could be issued before the end of 1999. The Ratepayer Advocate, together with Board Staff, actively participated in this matter and issued numerous discovery requests and attended negotiation meetings.

On August 11, 1999, the Ratepayer Advocate filed comments with the Board setting forth its concerns. In particular, the Ratepayer Advocate contended that PSE&G's proposal did not pass through all the securitization savings required by the EDECA and that it was not in compliance with the Act's requirement that only 75% of generation related stranded costs could be securitized. Additionally, the Ratepayer Advocate argued that the MTC Tax not be part of the irrevocable bond Order, and that the accumulated deferred investment tax credit (ITC) should be used as an offset to the transition bond charge. The Ratepayer Advocate also argued that PSE&G was requesting transition cost charges in excess of the \$125 million authorized by the Act, and raised a number of other calculation and accounting issues affecting the appropriate transition bond charge.

In its written Order on PSE&G's Unbundling, Stranded Costs, and Restructuring filings, Docket No. EO97070461 *et al.*, dated August 24, 1999 the Board decided that the MTC Tax should be separate from the MTC and could be reconciled for changes in tax rates. On the ITC issue, the Board required PSE&G to seek a letter ruling from the IRS to determine whether or not the value of the ITC can be credited to customers without violating the tax normalization policies of the IRS. The Board also ruled that PSE&G could recover through securitization only up to \$125 million in transition costs.

On September 17, 1999, the Board also issued its Bondable Stranded Costs Rate Order, Docket No. EF99060390, which authorized PSE&G to issue up to \$2.525 billion of securitization bonds to be used to reduce its otherwise recovery-eligible stranded costs, and to use the savings to reduce rates to customers. The Board also designated then BPU President Herbert Tate as its Designee under this Financing Order. As required by the Act, PSE&G certified that it consented to the terms of the Order.

On October 6, 1999, the Board's Final Order in the stranded costs, unbundling and restructuring case was appealed to the Appellate Division by New Jersey Business Users (NJBUS). Subsequently, the Ratepayer Advocate and Co-Steel Raritan, another party, appealed the Board's September 17, 1999 Financing Order. These appeals were consolidated with the appeals of the BPU's August 24, 1999 final PSE&G restructuring order. On April 13, 2000, the Appellate Division issued an opinion affirming the Board's decisions.

Thereafter, the New Jersey Supreme Court granted petitions for certification filed by the Ratepayer Advocate and NJBUS. The following section discusses the decision of the New Jersey Supreme Court on this matter.

NEW JERSEY SUPREME COURT AFFIRMS, BY A 4 TO 1 VOTE, BPU'S ORDERS IN PUBLIC SERVICE ELECTRIC AND GAS COMPANY (PSE&G) RESTRUCTURING AND SECURITIZATION CASES, DOCKET NO. A-139/140/149 (1999)

On July 13, 2000, the New Jersey Supreme Court granted Petitions for Certification filed by the Ratepayer Advocate and the New Jersey Business Users Group (NJBUS) seeking to reverse the Appellate Division's opinion that affirmed the BPU's restructuring orders applicable to Public Service Electric and Gas Company (PSE&G). The Ratepayer Advocate had challenged, *inter alia*, the BPU's approval of the transfer of generating assets to an unregulated affiliate without a hearing, the level of stranded cost recovery granted, and the level of rate reductions PSE&G must provide under the Order. If the appeal had been successful, it would have provided even greater rate reductions for PSE&G's customers.

The Ratepayer Advocate's initial brief in the Appellate Division of the Superior Court raised the following issues: that the BPU's determinations with respect to the level of stranded cost recovery authorized for PSE&G were not in accord with the applicable law; that the level of customer rate reductions approved did not comply with the Act; that the BPU's approval of the Genco transfer without any evidentiary hearing violated fundamental due process rights; that the BPU improperly approved more than the permissible percentage of securitization under the Act; and other associated issues. Additional briefs were filed on January 5, 2000 and January 14, 2000, and oral argument was heard on March 8, 2000.

On April 13, 2000, the Appellate Division issued its opinion substantially affirming the BPU's stranded cost and securitization Orders. The Appellate Division found that the BPU's determinations with respect to the level of stranded cost recovery authorized for PSE&G complied with applicable law; that the level of customer rate reductions approved was consistent with the requirements of the Act; that the BPU's approval of the Genco transfer without any evidentiary hearing did not violate the Act or due process rights; and that the BPU's approval of PSE&G's issuance of \$2.5 billion in transition bonds was in accord with the applicable law. The Court generally deferred to the BPU's decision on all major issues.

On May 5, 2000, the NJBUS filed a Notice of Petition for Certification with the New Jersey Supreme Court. The Ratepayer Advocate also filed a Petition for Certification, which was granted. The Court requested additional briefs from the parties, which were filed in August and September. Oral argument was held on November 8, 2000, and, at the Court's request, the parties filed post-hearing briefs on December 1, 2000. On December 6, 2000, the Court issued an Order affirming the Appellate Division's decision by a 4 to 1 vote. In a written Order dated May 18, 2001, the Supreme Court's ruling, among other things, permitted PSE&G to go forward with securitization and the transfer of its generating facilities to an unregulated affiliate.

On January 2, 2001, Co-Steel Raritan, another appellant in this case, served notice that it intended to file a Petition for Certiorari with the United States Supreme Court in this matter. On June 13, 2001, the Ratepayer Advocate filed its decision not to file a response to Co-Steel's petition unless requested by the Court. On October 1, 2001, the Court denied Co-Steel's petition for a Writ of Certiorari and ended any further appeals of this case.

JERSEY CENTRAL POWER & LIGHT COMPANY d/b/a GPU ENERGY STRANDED COSTS, UNBUNDLED RATES AND RESTRUCTURING PROCEEDINGS, BPU Docket Nos. EO97070458, EO97070459 and EO97070460

Pursuant to the enactment of EDECA on February 9, 1999, and as directed by the Board, in April 1999, Jersey Central Power & Light Company, d/b/a GPU Energy (JCP&L)⁵ filed with the Board a proposed settlement of the stranded costs and unbundled rates proceedings that had been signed by the utility and several intervenors. On April 20, 1999, the Ratepayer Advocate filed a separate proposed settlement signed by this office and other intervenors. On May 24, 1999, the Board issued a Summary Order on the proposed JCP&L settlement that adopted some parts of each party's proposal and made other modifications.

The BPU modified the utility's proposal by reducing the amount of stranded cost recovery for the Oyster Creek nuclear generating station from \$525 million to \$400 million and allowed the utility to securitize the \$400 million. The Board also increased JCP&L's proposed rate reductions to require the utility to reduce overall rates by 5% on August 1, 1999, by a cumulative 6% on August 1, 2000, by 8% on August 1, 2001 and by 11% by August 1, 2001. The Act required a minimum 5% reduction by August 1, 1999, and a minimum 10% reduction by the start of the fourth year of retail competition.

The Board reduced the distribution component of unbundled rates from JCP&L's proposed 3.45 cents per kWh to 3.35 cents. The Ratepayer Advocate had proposed higher shopping credits than JCP&L's proposal which applied to customers who choose an alternative electricity supplier. While the Board did not adopt the 6.28 cents/kWh residential shopping credit proposed by the Ratepayer Advocate, it did increase the shopping credit for JCP&L's residential customers by 0.6 cents per kWh from JCP&L's proposal. Therefore, residential customers received a shopping credit of 5.65 cents per kWh in 1999, received 5.7 cents in 2000, 5.75 cents in 2001, 5.8 cents in 2002 and 5.82 cents in 2003. The Board adopted the shopping credits proposed by the utility for commercial and residential customers.

JCP&L had proposed to eliminate a reduced tariff for certain residential customers with "all-electric homes", *i.e.*, electrically heated. The Ratepayer Advocate strongly opposed the end of this tariff. The Board decided to maintain the electric home rate discount for the first year of retail competition and then phase it out by one-third each year for the next three years.

⁵ JCP&L is no longer doing business as GPU and is now a subsidiary of First Energy Inc..

JCP&L had proposed that all customers who return to the utility's basic generation, or default service, after choosing an alternate supplier would be required to remain on that basic generation service for a one year minimum. The Board modified the utility's proposal to require the one year minimum for commercial and industrial customers only. For basic generation service costs that are deferred for recovery over the transition period, the Board set a rate of return equal to the interest rate for a midterm A-rated bond instead of the full rate of return approved in the Company's last base rate case. Also, the utility's costs for power purchases from non-utility generators (NUGs) will be subject to annual review with participation by the Ratepayer Advocate.

On March 7, 2001, the Board issued its Final Decision and Order incorporating the above-mentioned rate reductions and shopping credits pursuant to EDECA. Furthermore, JCP&L was ordered to make a rate filing no later than August 1, 2002 concerning all elements of unbundled rate components to be implemented beginning August 1, 2003. See discussion of JCP&L base rate and deferred balance petition below.

**IN THE MATTER OF THE VERIFIED PETITION OF JCP&L CO. d/b/a GPU ENERGY,⁶
FOR A BONDABLE STRANDED COST RATE ORDER, BPU Docket No. ER99080615**

On August 25, 1999, Jersey Central Power & Light Company, d/b/a GPU Energy (JCP&L) requested from the New Jersey Board of Public Utilities an irrevocable Bondable Stranded Cost Rate Order for authorization to issue up to \$420 million of Transition Bonds. The Company requested that the irrevocable Bondable Stranded Cost Order and the Board Summary Order dated May 24, 1999, in which the Board allowed the Company securitization of a portion of the Company's stranded costs, up to \$420 million, be modified to fund rate reductions approved by the Board.

In its original filing, the Company had requested securitization of \$400 million of stranded costs, plus transaction costs aggregating approximately \$20 million. The Ratepayer Advocate issued a number of discovery requests, and in conjunction with Board Staff, reviewed the details of the Company's filing. It was expected that the participating parties (the Company, Board Staff, and the Ratepayer Advocate) would try to resolve this proceeding through negotiation, and, if settlement was not achieved, would submit the disputed issues to the Board for resolution. The Company requested that the transition bonds be issued through a negotiated process, similar to that in other states. The Company also agreed to request a private letter ruling from the IRS pertaining to the status of the deferred income taxes attributable to its Oyster Creek nuclear generating plant and in compliance with the normalization requirements of the Internal Revenue Code.

After its original filing, JCP&L filed two amendments to its petition. In December 1999, JCP&L filed an amendment, seeking to securitize more than \$100 million in additional costs associated with its pending sale of the Oyster Creek nuclear plant. In May 2001, JCP&L filed a second amendment withdrawing its request for additional Oyster Creek-related securitization amounts, thereby reducing the total amount of Transition Bonds that it intended

⁶ JCP&L is no longer doing business as GPU and is now a subsidiary of First Energy Inc..

to issue. As result of the amendments, JCP&L was seeking \$320 million in Transition Bonds, rather than \$420 million as originally proposed.

The Ratepayer Advocate served additional discovery requests on the issues implicated by the latest amendment to the petition. The BPU had a public hearing on this matter on January 9, 2002. The Ratepayer Advocate presented a witness at the hearing to analyze the proposal.

On January 16, 2002, the Ratepayer Advocate filed written comments not opposing the proposed securitization transaction but raising concerns about certain alleged benefits of securitization. On February 6, 2002, the Board issued an order allowing JCP&L to issue and sell transition bonds in the amount of a \$320 million relating to its stranded investment (net of taxes). In June 2002, JCP&L issued and sold the bonds.

ATLANTIC CITY ELECTRIC (d/b/a CONECTIV POWER DELIVERY) STRANDED COSTS, UNBUNDLED RATES AND RESTRUCTURING PROCEEDINGS, BPU Docket Nos. EO97070455; EO97070456 and EO97070457

After the enactment of *EDECA*, the Board directed the parties who had litigated Atlantic City Electric's stranded costs and rate unbundling proceeding to engage in settlement negotiations. Several weeks of negotiations failed to produce a comprehensive settlement agreement. On June 9, 1999 Atlantic Electric filed a settlement proposal with the Board. On June 16, 1999, the Ratepayer Advocate, along with the Mid-Atlantic Power Supply Association, the New Jersey Industrial Customer Group, and the New Jersey Business Users, filed an Alternative Settlement Proposal with the Board. The Ratepayer Advocate's alternative proposal, contrasting with Atlantic's proposal, contained provisions that would have provided more benefits to customers in the emerging competitive market including rate reductions, shopping credits, divestiture, and assistance in government aggregation.

The Board issued its Summary Order on July 15, 1999. The Board adopted parts of Atlantic's Proposal and parts of the Ratepayer Advocate's proposal. The Board's detailed written Final Decision and Order was issued on March 30, 2001. In the Order, the Board increased the rate reductions for Atlantic's customers to:

5% on August 1, 1999, increasing to

7% on January 1, 2001, increasing to

10% on August 1, 2002

The Board also increased the shopping credits for residential customers from Atlantic's proposal as follows:

1999	5.65 cents/kWh
2000	5.70 "
2001	5.75 "
2002	5.80 "
2003	5.85 "

Atlantic had proposed that all customers who return to the utility's basic generation, or default service, after choosing an alternative supplier would be required to remain on basic generation service for one year unless the customer's return to basic generation was due to third party supplier default. The Board modified the utility's proposal to require the one year minimum for commercial and industrial customers only.

ROCKLAND ELECTRIC STRANDED COSTS, UNBUNDLED RATES AND RESTRUCTURING PROCEEDINGS, BPU Docket Nos. EO97070464, EO97070465 and EO97070466

Rockland Electric Company (Rockland) is the smallest New Jersey electric utility with approximately 70,000 customers. Pursuant to the Board's directives following the enactment of *EDECA*, the parties engaged in settlement negotiations, which proved unsuccessful. On July 13, 1999, Rockland filed a unilateral settlement proposal with the Board. The Ratepayer Advocate filed its alternate proposal, joined by the Mid-Atlantic Power Supply Association, on July 20, 1999.

The Board ruled on this matter at its July 26, 1999 agenda meeting and issued a Summary Order memorializing its Decision on July 28, 1999. The Board adopted parts of Rockland's proposal and parts of the Ratepayer Advocate's proposal. The Board increased Rockland's rate reductions to:

5% on August 1, 1999.

7% on January 1, 2001

11.6% on August 1, 2002

The Board also increased the shopping credits for Rockland's residential customers to 5.263 cents/kWh from August 1, 1999 through July 31, 2003. As reflected in the Board-ordered rate discounts, the Board reduced the distribution component of the delivery rate by \$1 million annually on a permanent basis, effective January 1, 2001, resulting in an average rate reduction from 4.810 cents per kWh to 4.734 cents per kWh. The Board permitted Rockland to collect interest up to \$5 million of its Restructuring balance Account at a rate set at the cost of Rockland's seven-year debt. For balances in excess of \$5 million, Rockland may collect interest at a rate 350 basis points over the cost of seven-year debt and may petition the Board for further relief.

The Board issued its Final Decision and Order on July 22, 2002. On August 12, 2002, Rockland filed a Motion for Clarification and/or Reconsideration in Part of the Board's Final Order and Decision. Rockland challenged the Board's net of tax ruling with respect to the Deferred Balance and the interest rate the Board approved for the Deferred Balance. The Board ruled on Rockland's Motion at its October 3, 2002 agenda meeting and issued an Order memorializing its Decision on October 16, 2002. The Board rejected Rockland's position on the net of tax issue and clarified its position on the proper interest rate to be applied to the Deferred Balance.

On November 4, 2002, Rockland filed a Motion for Reconsideration in Part of the Board's October 16, 2002 Order on Motion for Reconsideration and/or Clarification. Later, by a letter to the Board dated December 17, 2002, Rockland asked that its Motion of November 4, 2002 be withdrawn.

/M/O PUBLIC SERVICE ELECTRIC & GAS COMPANY FOR APPROVAL OF AN INCREASE IN ELECTRIC RATES AND DEFERRED BALANCE FILING, BPU Docket Nos. ER02080503 and ER02080604

Public Service Electric and Gas Company (PSE&G) is a New Jersey electric and natural gas public utility primarily engaged in the delivery and sale of electric energy and related utility services to over two million customers within Bergen, Burlington, Camden, Essex, Gloucester, Hudson, Mercer Middlesex, Monmouth, Morris, Passaic, Somerset and Union Counties.

In May of 2002, PSE&G filed a base rate petition with the BPU. In August of 2002, PSE&G filed the deferred balance case. The Company filed for a rate case increase of \$250 million or 12.8% increase over current rates. PSE&G updated the proposed increase to \$287 million in September of 2002. At the time of the filing, PSE&G proposed to decrease its Societal Benefits Charge ("SBC") and Non-Utility Transition Charge ("NTC") rates by \$122.4 million. The petition requests that the \$122.4 million offset the base rate increase of \$250 million so that the aggregate increase would be approx. \$127.6 million. The overall increase in rates would therefore change from 12.8% to 9.5%. The Company is not proposing securitization at this time. PSE&G's last rate increase was approved in January 1993.

The Ratepayer Advocate filed initial testimony on October 15, 2002, recommending that the Company be allowed to increase rates by \$71.5 million which is \$217 million less than the Company's requested increase.

As of January 2003, the Ratepayer Advocate is reviewing the prudence and accuracy of the Company's proposed rate increase and deferred balance calculation. Evidentiary hearings were scheduled for January 13, 2003 at the Office of Administrative Law.

/M/O JERSEY CENTRAL POWER & LIGHT COMPANY APPROVAL OF AN INCREASE IN ELECTRIC RATES, DEFERRED BALANCE, REMEDIATION ADJUSTMENT CLAUSE and CONSUMER EDUCATION FILING, BPU Dkt. Nos. ER02080506, ER02080507 and ER02070417

Jersey Central Power and Light (JCP&L) is a New Jersey electric public utility primarily engaged in the delivery and sale of electric energy and related utility services to more than 1,000,000 residential, commercial, and industrial customers located within 13 counties and 236 municipalities in the State of New Jersey.

On August 1, 2002, JCP&L filed its deferred balance and base rate petitions with BPU. The Company filed for a distribution rate case decrease of \$11 million. JCP&L has updated

the proposed decrease to \$47.7 million. At the time of the filing, JCP&L projected (to 8/31/03) a deferred energy balance of approximately \$684 million. This amount was updated to \$740 million. JCP&L's last base rate increase was approved June 1992.

The Company is proposing to securitize the entire deferred energy balance amount over 15 years assuming a 5.5% interest rate. If securitization is approved by the Board, the company is requesting an increase in annual net operating revenues of approximately \$122 million which would represent an overall average rate increase of approximately 6.3%.

In the alternative, if the Company is not permitted to securitize its deferred energy balance, the Company is requesting that the deferred energy balance be amortized over four years, based upon the rate of interest yielded by the 7 year Treasury note, plus 60 basis points. The requested annual increase to net operating revenues would be \$258 million which would represent an overall average rate increase of 13.2%. Pursuant to the merger agreement with FirstEnergy, its Ohio based parent, the Company has provided the capital structures of First Energy and JCP&L as of December 31, 2001. The Company proposed the use of a "normalized" JCP&L capital structure with a 12% return on equity. The Company is also seeking recovery of costs associated with the 2002 manufactured gas plant remediation petition filed March 13, 2002 requesting recovery of \$11.8 million in costs expended to remediate gas plant sites for the period from January 1, 1996 through July 31, 2003 and its Consumer Education Program petition filed on July 17, 2002 to review the prudence and recoverability in rates of \$3.7 million cost incurred in connection with its consumer education program.

The Ratepayer Advocate is evaluating the prudence and accuracy of the Company's proposed base rate increase and deferred energy balance amount and the manner in which the Company should be allowed to recover the deferred energy balance. As a result of its review, the Ratepayer Advocate filed Direct testimony on December 20, 2002 recommending that the Company be allowed to increase rates by only \$51 million, \$239 million less than the Company's requested increase.

W/O ATLANTIC CITY ELECTRIC d/b/a CONECTIV POWER DELIVERY FOR APPROVAL OF AMENDMENTS TO ITS TARIFF TO PROVIDE FOR AN INCREASE IN RATES FOR ELECTRIC SERVICE, BPU Dkt. No. ER02080510

Atlantic City Electric Company (ACE) doing business as "Conectiv" is a New Jersey electric public utility primarily engaged in the delivery and sale of electric energy and related utility services to approximately 500,000 residential and commercial customers located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean Salem Counties. Conectiv merged with Pepco in 2002 ; both are subsidiaries of Pepco Holding Inc.

On August 1, 2002 ACE filed with BPU its deferred energy balance Petition. At the time of filing, ACE projected (up to 8/31/03) a deferred balance of approximately \$176.4 million including carrying costs. The Board has Ordered ACE to file a distribution base rate case by February of 2003.

The Company has not requested securitization thus far for its deferred energy balance. ACE has requested that the entire deferred balance be amortized over four years at a seven year treasury note plus 60 basis points. The requested annual increase to net operating revenues would be \$71.6 million representing an overall average rate increase of 8.4%.

In January 2002 , ACE filed with the BPU its 2002 Customer Education Program Petition to review the prudence and recoverability in rates of \$3.9 million (including interest) incurred in connection with their consumer education program. The Petition was merged into the deferred balance case by the Board. The Ratepayer Advocate investigated the prudence and accuracy of the Company's proposed deferred balance amount and the manner in which the Company should be allowed to recover the deferred balance. After its review, the Ratepayer Advocate filed Direct testimony on January 3, 2003, recommending that the Company be allowed to increase rates by only \$13.4 million per year for 10 years, \$25.4 million less than the Company's requested increase.

IN/VO ROCKLAND ELECTRIC COMPANY FOR APPROVAL OF CHANGES IN ELECTRIC RATES AND DEFERRED BALANCE FILING, BPU Dkt. Nos. ER02100724 and ER02080614

Rockland Electric Company (RECO) is a New Jersey electric public utility primarily engaged in the delivery and sale of electric energy and related utility services to approximately 70,000 residential and commercial customers located within Bergen, Passaic and small areas of northern Sussex County. RECO's parent Company Orange and Rockland is a wholly owned subsidiary of Consolidated Edison. RECO does not own any generation assets.

Rockland filed its deferred balance case with the BPU on August 30, 2002. The Company filed its distribution rate increase Petition with the BPU on October 1, 2002. The Company filed for a distribution rate case (increase of \$7.3 million, a 5.5% increase over current rates). At the time of the filing, RECO projected to 8/31/03, a deferred balance of approximately \$110.5 million including carrying costs. RECO's rates were last increased in January of 1992.

The Company is proposing to securitize the entire deferred energy balance amount over 15 years assuming 6.57% interest rate plus transaction costs in its November 8, 2002 securitization filing. If securitization is approved by the Board, the Company is requesting an increase in annual net operating revenues of approximately \$9.904 million, representing an overall average rate increase of approximately 7.2%. In the alternative, if the Company is not permitted to securitize, the petition requests that the deferred balance be amortized over four years at 6.25%. The requested annual increase to net operating revenues would be \$34 million, representing an overall average rate increase of 25%.

The Ratepayer Advocate is investigating the prudence and accuracy of the Company's proposed base rate increase and deferred balance amount and the manner in which the Company should be allowed to recover the deferred balance. As a result of its inquiries, the Ratepayer Advocate will file direct Testimony on January 13, 2003.

IN/OUT THE PROMULGATION OF THE STANDARDS BY THE BOARD PURSUANT TO THE PROVISIONS OF THE *ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT* OF 1999, P.L. 1999, C. 23. BPU Docket No. EX99030182

The Ratepayer Advocate testified and filed comments on the “interim standards” rulemakings conducted by the Board pursuant to the Act that requires the Board to promulgate interim standards with respect to government aggregation, consumer protection and slamming, licensing, affiliate relations, renewable portfolio and net metering and environmental disclosure. These interim standards can be found on the Board’s website at www.bpu.state.nj.us. Following the passage of the legislation, the Ratepayer Advocate participated in the various working groups and made the following proposals for interim standards:

MUNICIPAL AGGREGATION LEGISLATION

The Ratepayer Advocate has been a consistent advocate of government aggregation as the only way the benefits of restructuring can trickle down to residential consumers. On March 26, 2002, the Legislature introduced legislation, A-2165/S-1433, to revise the process for government energy aggregation in New Jersey.

The Ratepayer Advocate worked very closely with the sponsors of the legislation, Assemblyman John Burzichelli and Senator Stephen Sweeney, as well as legislative staff, Governor’s Counsel Office, the Board of Public Utilities, the League of Municipalities and other concerned parties, to draft specific provisions of the bill to ensure that government aggregation would be a viable option in the state.

The drafting process took place over several months, with several versions of the bill proceeding through the legislative process. The most recent actions as of January 2003, were Senate floor amendments on December 16, 2002. The bill is awaiting consideration by the full Senate, and will need a concurrence from the Assembly.

Throughout this process, the Ratepayer Advocate has supported the bill’s efforts to simplify the process of government aggregation and to remove the barriers to aggregation that exist in the current version of the Electric Discount and Energy Competition Act.

The Ratepayer Advocate has consistently argued that residential and small commercial customers can not realize benefits from the new market structure because they do not have a load profile attractive to third party suppliers. Since “economies of scale” favor large industrial customers over residential and small customers, small customers need vehicles such as Government Energy Aggregation Programs to be attractive to energy suppliers.

The Ratepayer Advocate has determined that the Government Energy Aggregation sections of EDECA as currently structured are cumbersome and overly complex for implementation by both the municipalities and third party suppliers interested in aggregating.

The Ratepayer Advocate maintains the position that current government aggregation provisions need at least the following provisions to effectively protect consumers while facilitating the formation of government aggregation:

- Provide for an opt-out aggregation program in New Jersey which has been proven in other states as the only viable way for municipalities to form aggregation programs:
- The rates offered under the municipal aggregation program must be equal to or less than the rates under the Basic Generation Service ("BGS") or the Basic Gas Supply Service ("BGSS"). In this way, participants of the government aggregation program will be guaranteed that the price they pay will never be more than the rates offered by their local utility; and
- The municipal aggregation process should be simple to understand, decreasing confusion among third party suppliers and municipal aggregators. In brief, the constraints built in to the current version of EDECA include the requirements of protracted and redundant procedures before an aggregator can execute a contract, the requirement, even after numerous "checks and balances" have been honored, that every non-government customer affirmatively opt-in and cumbersome contracting procedures, ill-suited for fast-changing competitive energy markets in which suppliers are asked to freeze prices for an extended period of time.

These unnecessary barriers may exist as by-products of well-intentioned but not effective regulations intended to protect consumers. The Ratepayer Advocate, while concerned with protecting the public against unscrupulous businesses, is concerned that over zealous consumer protection efforts can impede access to benefits that energy restructuring promised all consumers. Protecting consumer interests, an unquestionably important goal, must be balanced to avoid over protection which deters or undermines the competitive marketplace.

The Ratepayer Advocate supports amendments to the aggregation sections of EDECA that can bring the benefits of competition to New Jersey small energy users. The Ratepayer Advocate and its staff will continue to work with the Legislature in 2003 on this very important undertaking.

THE RATEPAYER ADVOCATE'S CONSUMER PROTECTION AND ANTI-SLAMMING INTERIM STANDARDS PROPOSALS

The Act contains a strong directive to implement retail customer choice with meaningful and comprehensive consumer protection standards applicable to electric and gas suppliers. Section 36 of EDECA requires the Board to adopt interim standards which must, at a minimum, address "...standards for collections, credit, contracts, authorized changes of an energy consumer's electric power supplier or gas supplier, for the prohibition of discriminatory marketing, for advertising and for disclosure." At the public hearing regarding interim standards, the Ratepayer Advocate presented comments designed to implement these statutory directives and to assure that the move to retail electric competition is not

accompanied by fraud, unfair and deceptive trade practices, or customers confusion and uncertainty about their ability to obtain and to maintain vital electric and gas services, essential to health and safety.

The Board adopted its final form of interim Consumer Protection standards, effective July 9, 1999, that incorporated many of the proposals of the Ratepayer Advocate. Consistent with the Ratepayer Advocate's proposals, the interim Consumer Protection standards are applicable to all competitive suppliers, including utility affiliates and utilities themselves to the extent they are marketing or have been allowed to sell competitive products or services. The Ratepayer Advocate also strongly endorsed the requirement that suppliers include a price per kWh for electric generation service in ads that include price information, a requirement in the standards.

The Board's interim Anti-Slamming standards reflected the statutory directives in Section 37 of the Act, but did not contain the level of detail necessary to provide guidance to the public or suppliers and to insure that the Board's standards are enforceable. The Ratepayer Advocate submitted comments designed to provide the level of detail necessary to meet these requirements and to prevent the unfortunate practices that developed in the telecommunications industry with respect to slamming including forgery, heavy handed sales techniques, use of prizes and other deceptive practices.

The Ratepayer Advocate also proposed that the rules should prohibit obtaining a customer's signature by forgery, deceit, or by any manner in which a reasonable person would not understand the nature of the letter of authorization. Such an explicit rule should be added to allow the BPU to summarily revoke the authority of a supplier who engages in such conduct. It was the Ratepayer Advocate's recommendation that the BPU should also set forth a mandatory minimum penalty for suppliers that violate this rule.

On May 22, 2000, the Ratepayer Advocate filed proposed amendments to the Interim Consumer Protection and Anti-Slamming Standards adopted by the Board, which it hoped the Board would incorporate into existing standards concerning retail choice, particularly in the areas of customer enrollment and suppliers' door-to-door marketing techniques.

The Ratepayer Advocate's proposed amendments would have established a fair and rapid means of resolving customer complaints regarding slamming and would have imposed significant penalties on energy suppliers who illegally switch customers. These proposed rules responded to the growing use of door-to-door marketing and the significant increase in customer complaints against marketers who use this sales method by setting forth minimum consumer protection policies and procedures that accompany this type of marketing. The proposal also established a "Do-not-Call" List for New Jersey consumers who wish to avoid telemarketing by energy suppliers⁷.

However, the Board did not act on the Ratepayer Advocate's proposals, other than to establish the Internet Pilot Program for Internet Enrollment. Because the existing Interim

⁷ Senator Peter Inverso's Bill (S-1908) and Assemblyman Richard H. Bagger's Bill (A-3185) amending P.L. 1999, c. 23, Section 3, (N.J.S.A. 48:3-51) was signed into law on September 5, 2001. The law establishes a "Do-not-Call" list for consumers who do not want to receive telemarketing calls by energy suppliers.

Standards were to expire on January 9, 2001, the Board re-adopted them with only minor, technical changes at its January 5, 2001 agenda meeting. Although the readopted rules do not expire until January 9, 2006, the Board has stated that it planned to issue a new proposed rulemaking for consumer protection, anti-slamming and supplier licensing in the future. As of January, 2003, the Board has not published new proposed rules for consumer protection, anti-slamming or licensing.

On the issue of customer sign-up for a third party supplier, which standards required the customer to sign a written authorization to select or change a natural gas or electricity supplier, the Ratepayer Advocate had argued that this requirement was anti-competitive and that no other state requires a customer to provide a written authorization as the sole method of initiating service with a supplier or changing from one supplier to another, except for Montana. Rather, most states (CA, PA, MA, ME, CT) allow a customer to enroll telephonically or electronically via the Internet if there is an independent third party verification of the change order. The Board approved Internet Enrollments under a pilot program which took effect September, 2000 but still required the “wet signatures” for other types of enrollment.

On September 5, 2001, bills S-1908 and A-3185 were signed into law. The legislation amended *N.J.S.A. 48:3-51*, which allows consumers to change energy suppliers via internet or electronic signature, audio recording of telephone solicitation initiated by the customer, or an independent third party verification of telephone solicitation initiated by the energy supplier. Also, the legislation memorializes the right of consumers to submit their names to the Board to be included on a list to restrict contact via telephone by energy suppliers. The Board is in the process of implementing a “Do Not Call” List.

On January 3, 2002, the New Jersey Legislature approved legislation (S-1358) authorizing the Board of Public Utilities to adopt the Federal Communications Commission’s (FCC) regulations concerning slamming of telephone customers. These FCC regulations delegate broad authority to State utility commissions to enforce slamming penalties and settle such disputes. On January 7, 2002, S-1358 was signed into law. The Ratepayer Advocate has recommended that such legislation should be adopted to amend EDECA concerning retail energy competition and to protect residential consumers.

INTERIM STANDARDS FOR LICENSING

With respect to interim standards for Licensing, the Ratepayer Advocate observed that the New Jersey Legislature declared that it was the policy of this State to:

Maintain adequate regulatory oversight over competitive purveyors of retail power and natural gas supply and other energy services to assure that consumer protection safeguards inherent to traditional public utility regulation are maintained, without unduly impeding competitive markets. **[Act, Section 2(a)(3)]**. and;

Provide for regulation of new market entrants in the areas of safe, adequate and proper service and customer protection. **[Act, Section 2(c)(2)]**.

Thereafter, the Ratepayer Advocate testified at a public hearing on interim standards. The Ratepayer Advocate's rulemaking comments on Licensing proposed a number of provisions to be added to the rules or clarified to make the final rules enforceable. For example, the Ratepayer Advocate recommended that the proposed rules should clearly define the types of retail activities that are prohibited without a license, including prohibiting a supplier without a license from the Board from contracting, offering to contract, enrolling customers, providing generation service or gas supply service, or arranging for a contract for the provision of these services. The Ratepayer Advocate argued the importance of imposing these standards on suppliers (including brokers, marketers and agents) so that they cannot target customers for marketing or sales activities without the Board's review and approval of their ability to do business with New Jersey consumers. Although the proposed rules made references to the statutory enforcement powers of the Board, the Ratepayer Advocate recommended that the rules should specifically identify the Board's authority to assess penalties, issue cease and desist orders, order restitution to affected consumers, revoke or suspend a license, and enforce the Act's provisions by means of judicial process.

The Board adopted interim standards on licensing, anti-slamming, and consumer protection at its May 12, 1999 agenda meeting that incorporated many of the Ratepayer Advocate's recommendations. The Board re-adopted the interim licensing standards at its January 5, 2001 agenda meeting with only minor, technical changes. These re-adopted rules do not expire until January 9, 2006.

INTERIM AFFILIATE RELATIONS STANDARDS

The Ratepayer Advocate proposed that the rules should make it apparent that an affiliate's employees engaged in gas and electric energy purchasing must not be shared with those in the regulated utility, and that utilities and their affiliates may not provide energy purchasing services for each other. This prohibition would help enforce the non-discrimination standard and make it more difficult for the utility purchasing unit to favor the marketing affiliate by allocating less costly capacity and supply to the affiliate.

The Ratepayer Advocate also proposed that the Board should expressly state that it has the authority to adopt regulations which apply directly to the utility's affiliates engaging in competitive activities prohibiting both utilities and their affiliates from trading on the affiliate relationship and using similar logos; that the Board should prohibit a utility's affiliate from using the utility's name or logo when marketing its products in New Jersey even when disclaimers are made denying any benefits from the affiliation, since disclaimers often are unnoticed or unheeded by customers; and prohibition of joint marketing or advertising by the utility and its affiliate.

On March 15, 2000, the Board adopted its final form of interim standards on affiliate relations. The interim affiliate standards were very similar to the initial draft regulations, and did not adopt many of the Ratepayer Advocate's proposed amendments, including the recommended prohibition of the utility affiliate's use of the utility's name and logo. The interim affiliate standards expired on March 11, 2002.

On April 15, 2002, the Board issued proposed rules for Readoption with Amendments

of N.J.A.C. 14:4-4, 5 and 6. The Ratepayer Advocate filed comments on the proposed rules on June 14, 2002. The rules were ultimately adopted by the Board on August 21, 2002 (N.J.R. 3230), with an effective date of September 16, 2002. The readopted rules do not expire until January 9, 2006.

ALTERNATIVE DISPUTE RESOLUTION (ADR) STANDARDS FOR AFFILIATES

The affiliate regulation draft regulations require each gas or electric utility to file its compliance plan with the Board to show that the utility has adequate procedures to comply with the regulations, and to file any revisions to the compliance plan. Utilities must also notify the Board and make a public posting when a new affiliate is created that would be covered by the regulations. The Ratepayer Advocate recommended that the utilities' compliance filings should provide dispute resolution procedures to handle complaints about violations of the draft regulations and that notices about alleged violations should also be filed simultaneously with the Ratepayer Advocate and the Board. The Ratepayer Advocate also recommended that the Board should include in the rules a description of its procedures to investigate and initiate alternative dispute resolution when a complainant is not satisfied with the utility's or affiliate's solution, and make a commitment to issue an initial or temporary decision within 60 days of the filing of a complaint. As of December 31, 2001, the Board had not readopted these regulations.

OTHER JURISDICTION'S ADOPTION OF ADR TO RESOLVE UTILITY AND TELECOMMUNICATIONS DISPUTES

The neighboring State of New York's Public Service Commission (NYPSC) adopted alternative dispute resolution (ADR) procedures effective March 24, 1992. In December 1999, the NYPSC also implemented an expedited dispute resolution (EDR) process to efficiently resolve disagreements between competing suppliers of telecommunication services. In addition, the NYPSC expanded ADR to the NY electric and gas markets. Similarly, the State of Washington's Utilities and Transportation Commission (WAUTC) issued a policy statement and report in December 1994 endorsing the use of ADR to resolve utility proceedings. The CPR Institute for Dispute Resolution, a nonprofit collaborative of corporate general counsel, law firms, legal scholars and regulatory officials, published in 1993 the *Negotiated Settlement of Utility Regulatory Proceedings-Recommended Practices*. The BPU was a member of the CPR Utilities Committee which produced the ADR report. This manual outlines applications of ADR techniques to resolve utility matters. The BPU further endorsed ADR techniques by hosting a full-day training seminar on March 31, 1995, attended by utility representatives, legal counsel, the Ratepayer Advocate and Board Staff. However, no regulations for required alternative dispute resolution have yet been ordered.

The Federal Energy Regulatory Commission (FERC) Staff has also engaged in the use of ADR to resolve complex energy proceedings and avoid protracted litigation. See, FERC ADR Agreement, FERC Docket Nos.: IS90-11-000 through IS90-17-000 (dated October 10, 1990). (www.ferc.fed.us) The FERC also issued an ADR Newsletter available to the public on its website to promote alternatives to litigation. The Ratepayer Advocate continues to support ADR as a crucial link in the development of a competitive retail energy market.

INTERIM RENEWABLE ENERGY PORTFOLIO STANDARDS AND INTERIM NET METERING, SAFETY AND POWER QUALITY STANDARDS FOR WIND AND SOLAR PHOTOVOLTAIC SYSTEMS

On July 19, 1999, the Ratepayer Advocate filed comments on the Board's proposed draft interim Renewable Portfolio Standard ("RPS") and interim Net Metering requirements. The Act specifies that renewable energy resources must initially comprise at least 2.5% of electricity supplied and increases this level to 6.5% by year 2012 and beyond. The proposed interim net metering standards allow a customer that generates electricity to be billed the difference between the electric power delivered from the utility and the amount of energy delivered from the customer for a facility up to 100 kW. The Ratepayer Advocate supported the draft RPS and net metering standards as an appropriate start to create a balanced and mutually reinforcing program for New Jersey to gain environmental benefits through renewable resources at a modest cost.

By Order dated June 15, 2001, the Board adopted interim RPS and Interim net metering standards for wind and solar photovoltaic systems, effective immediately (*N.J.A.C. 14:4-8 and 9*). These rules incorporated many of the Ratepayer Advocate's recommendations, and mandated net metering for wind and solar photovoltaic facilities 10 kW or less. Unresolved were the appropriate interconnection standards for facilities between 10 and 100 kW. The electric utilities made net metering compliance filings pursuant to the Board Order. Meetings were convened with Board Staff, the Ratepayer Advocate, the electric utilities, and renewable energy suppliers to resolve undetermined issues, including net metering standards for facilities above 10kW. It was agreed that all the utilities would use the IEEE-929 standard for interconnection and that there would be a uniform interconnection application. The parties are currently reviewing the appropriate standards to be implemented on a permanent basis. The BPU will decide this matter by the end of 2003.

As required by the Interim RPS Rules, (*N.J.A.C. 14:4-8.4(b)*), all electric utilities or energy suppliers filed their compliance plans with the Board by March 1, 2002. On November 20, 2002, the Board approved the publication of proposed rules for Readoption, with Amendments. The Ratepayer Advocate is monitoring this matter and will review the proposed rules, once published.

INTERIM ENVIRONMENTAL DISCLOSURE STANDARDS

On March 31, 1999, the Board released draft Environmental Disclosure Standards for public review and comment. The Ratepayer Advocate participated in the public hearing and comment proceedings. By Order dated August 3, 1999, the Board adopted interim Environmental Disclosure Standards.

The interim standards set forth the environmental information which must be disclosed by each electricity supplier or basic generation service provider, pursuant to the provisions of the Act. The environmental information to be disclosed includes the fuel mix (e.g, oil, natural gas, renewable, nuclear, etc.) and air emissions (in pounds per megawatt hour) associated with the generation of electricity, as well as information regarding the energy supplier's support of energy efficiency measures (as reflected in the number of emission reduction

credits retired). Furthermore, the environmental information must be displayed in an easy-to-understand uniform format, not unlike the mandatory nutrition labels found on prepared food products. The environmental information must be included on billing statements, customer contracts, and marketing material, as well as other mailings determined by the Board.

The Interim Environmental Disclosure Standards were re-adopted “as is” at *N.J.A.C. 14:4-4* on August 21, 2002 to avoid a lapse in the rule. (34 *N.J.R.* 3230) The implementation of these disclosure regulations is an ongoing, multi-phase process. Therefore, and in light of the developmental status of the PJM Generation Attribute Tracking System (GATS) that may affect New Jersey reporting requirements, the re-adoption of the interim standards was the practical solution to anticipating the future while continuing to require disclosure to the Board and to the consumers by generators or BGS providers about the fuel mix and emissions in the actual generation of electricity.

The Board will promulgate further environmental disclosure standards upon the completion of the PJM GATS. Board staff, in conjunction with the New Jersey Department of Environmental Protection, is working with PJM and other interested parties in the development of the PJM tracking system. The Board anticipates having environmental disclosure standards in place by the end of 2003.

The Ratepayer Advocate commented on the re-adoption of the Interim Environmental Disclosure Standards on June 14, 2002 supporting the principal that consumers must have accurate and meaningful information about the environmental consequences of the power they consume to encourage consumers to select a power source that is consistent with New Jersey’s environmental and energy efficiency goals.

The Ratepayer Advocate supported the re-adoption of the Environmental Disclosure Standards “as is,” and suggested that the third disclosure category (concerning the energy supplier’s support of efficiency measures through the retirement of emission reduction credits) be replaced with a different piece of graphical information. The replacement graph would show the total statewide reduction in emissions (NOX, SOX, particulates and CO₂) by generators over a five to ten year period. The purpose of this graph would be twofold: first, generators would be able to show total emissions reductions, whether through ratepayer-funded programs or not, allowing them to show the overall environmental benefits to the State, no matter who had paid for them, providing evidence for the consumers on whether or not the air is cleaner today than last year, and by how much; and second, a graphic such as this may be more understandable and can motivate the consumer to see the aggregate effects of emissions reduction on the air we breathe and the health of our people. The Board responded to this suggestion by adding this graphic for consideration during the PJM disclosure label design after the tracking system has been approved. (34 *N.J.R.* 3231)

Since December 31, 2001, the Ratepayer Advocate has worked with other parties, as part of a PJM Interconnection working group, to develop wholesale reporting requirements by which generating plant emission and fuel mix data can be tracked electronically, to permit the efficient collection of data found in the required environmental disclosure labels. The parties are continuing discussions and hope to have these reporting requirements in place by the end of 2003.

On April 15, 2002, the Board issued proposed rules for Readoption, with Amendments,

of N.J.A.C. 14:4-4, 5 and 6. The Ratepayer Advocate filed comments on the proposed rules on June 14, 2002. The rules were ultimately adopted by the Board on August 21, 2002 (N.J.R. 3230), with an effective date of September 16, 2002. The readopted rules do not expire until January 9, 2006.

INTERIM RENEWABLE ENERGY PORTFOLIO STANDARDS (RPS), BPU DKT. NO. EX99030182

On July 19, 1999, the Ratepayer Advocate filed comments on the Board's proposed draft interim Renewable Portfolio Standard (RPS) requirements. The RPS standards specifies the EDECA requirement that Class I and Class II renewable energy resources had to initially comprise 2.5% of energy supplied, with this level increasing to 6.5% by 2012, with a steady augmentation of the proportion of Class I energy sources (*i.e.*, solar, photovoltaic, wind, fuel cell, geothermal, wave, and sustainable landfill methane sources).

By Board Order dated June 11, 2001, the Board adopted the Interim RPS standards, which were effective immediately and can be found at N.J.A.C. 14:4-8 *et seq.* The Interim RPS standards require that by March 1 of each year (starting in 2002), electric power suppliers and basic generation suppliers shall file an annual report that demonstrates their compliance with the abovementioned renewable percentage requirements. At the November 20, 2002 Board Agenda meeting, the Interim RPS standards were approved for publication for re-adoption in order to prevent the regulations from expiring.

RATEPAYER ADVOCATE PARTICIPATES IN ELECTRIC DISTRIBUTION SERVICE RELIABILITY AND QUALITY STANDARDS WORKING GROUP, BPU Docket No. AX98020044.

Pursuant to Section 57 of the Act, the Board is required to adopt standards for the inspection, maintenance, repair and replacement of the distribution equipment and facilities of electric public utilities. "The standards may be prescriptive standards, performance standards, or both, and shall provide for high quality, safe and reliable service. The Board shall also adopt standards for the operation, reliability and safety of such equipment and facilities during periods of emergency or disaster. The Board shall also adopt a schedule of penalties for violations of these standards."

On January 18, 2000, the BPU convened an initial Working Group meeting to address Section 57. The Working Group met every Tuesday until June, 2000. Much time was spent on the implementation of Outage Management Systems (OMS) and Geographic Information Systems (GIS) and how such systems could improve service and enhance reliability. The Working Group discussions focused on distribution reliability data; the format of an annual report; quality of service benchmarks; a penalty matrix; and what other jurisdictions are doing.

When the Working Group concluded its work in June 2000, it had not reached a

consensus on the proposed standards. On July 20, 2000, the Board of Public Utilities approved proposed standards for publication and public comment. The prescribed comment period was thirty days from publication in the New Jersey Register on August 21, 2000.

On September 20, 2000, the Ratepayer Advocate filed the following recommendations with the Board:

- The BPU should establish minimum statewide service performance benchmarks on issues such as average length and frequency of service disruptions, rather than adopting different service performance levels for each utility and each district within each service territory. The Ratepayer Advocate argued that allowing certain utilities to provide service below a uniform statewide standard is inequitable -- all customers every where in the State should have standard reliability.
- The BPU should publish the numerical reliability benchmarks on issues such as the average duration and frequency of service outages in the rules, so that all customers will know the level of service they can expect.
- The rules should include monetary penalties for utilities that do not achieve the minimum reliability standards, as required under the EDECA.
- Mandatory customer service quality standards should be adopted. These standards should measure Business Office Performance (performance of customer call centers, billing error rates, etc.), Field Performance (percentage of missed appointments for repair and installations; timeliness of installation or connection orders) and Regulatory Program Performance (ratio of customer complaints handled by the Board, frequency of disconnections, and penetration ratios of low-income and other societal benefits programs) since the BPU does not address these issues at all.

At its November 28, 2000, agenda meeting, the BPU adopted the final form of its interim reliability rules, effective January 2, 2001, but did not adopt any of the Ratepayer Advocate's key recommendations. The adopted rules are almost identical to the version that was initially issued for public comment in August 2000. These rules do not establish uniform, statewide reliability standards, and there are no penalties for failing to achieve the standards that are in the rule. Unfortunately, the BPU's interim reliability standards are little more than low reliability "targets" for the electric distribution utilities to aim for, with no consequences if the goals are not achieved. The Ratepayer Advocate believes these issues should be reconsidered in 2003 and will continue to participate in the Board's Electric Reliability Working Group, urging these changes.

CUSTOMER ACCOUNT SERVICES (CAS), BPU Docket No. EX99090676

Under Section 6 of the EDECA, some or all customer account services (CAS), such as billing and metering, were to become competitive by August 1, 2000 (electric) and December 31, 2000 (natural gas). Following evidentiary hearings and lengthy negotiations in

late 2000 and 2001 the Ratepayer Advocate and several other parties reached settlement agreements with six of New Jersey's seven electric and gas public utilities, New Jersey Natural Gas Company, Public Service Electric and Gas Company, Atlantic City Electric Company, d/b/a Conectiv, Rockland Electric Company, and Elizabethtown Gas Company, providing for the implementation of competitive billing for these utilities' customers. No settlement was reached with South Jersey Gas Company.

As part of the CAS stipulations, the parties agreed to the creation of a CAS Implementation Working Group. The Ratepayer Advocate has actively participated in the CAS Implementation Working Group, which met during 2001 and 2002 to discuss the issues, procedures and protocols required for improved utility billing, consolidated supplier billing, purchase of receivables by the billing party and improved Electronic Data Interchange (EDI) processes. At its agenda meeting of August 29, 2001, the Board approved several working group recommendations regarding utility billing enhancements. The Working Group also developed a consensus Master Service Agreement for use by the electric industry and for Public Service's natural gas service. The agreement was approved in an Order issued by the Board on September 27, 2001.

The CAS Stipulations also provided for another working group to consider issues including bill credits for continued billing by non-utility suppliers, other issues related to other potentially competitive customer account services including billing-related services such as payment processing, customer bill inquiries and credit and collection; and metering services such as meter ownership, meter maintenance and meter reading. During meetings held in 2001, it became clear that the parties could not reach an agreed resolution. Thereafter, the parties participated in conference calls in which they considered a possible new CAS proceeding. In view of the reduced level of competitive activity in New Jersey's energy markets since the CAS Stipulations were signed; the pendency of Basic Generation Service and Basic Gas Supply Service proceedings; and the anticipated filing of rate proceedings by the four electric utilities, the parties agreed to defer any further CAS proceedings and recommence them at a later date to be determined by the Board. On July 24, 2002 the Board issued an Order providing that CAS-related issues would be examined in a proceeding to be commenced by the Board no later than May 15, 2003.

In a July 24, 2002 Order in connection with the Public Service Electric and Gas Company Year 5 rate proceedings, the Board noted the importance of assuring that the utilities' metering practices provide the flexibility to permit rate design decisions that reflect market conditions and encourage consumers to conserve energy and reduce peak demand. The Board therefore directed the four electric utilities to file, by August 15, 2002, reports detailing their current metering practices, providing options for the future, including electronic metering for residential and smaller commercial customers. As of January, 2003, reports have been filed by Public Service Electric and Gas Company and Rockland Electric Company. The Board is expected to commence informal discussions concerning the utilities' metering practices in early 2003.

RATEPAYER ADVOCATE PARTICIPATES IN UNIVERSAL SERVICE FUND PROCEEDING, BPU Docket No. EX00020091.

On February 28, 2000, The Board initiated a proceeding to establish Universal Service fund and Universal Service programs for electric and gas residential customers, as

contemplated under Section 12 of the Electric Discount and Energy Competition Act. The Ratepayer Advocate was an active participant in the “public/legislative” proceedings held during 2000, submitted extensive testimony and comments proposing the establishment of a Universal Service Fund and Universal Service program, and participated in public hearings held throughout the State in 2001 and 2002. The Ratepayer Advocate will continue to participate in this proceeding in 2003.

On November 21, 2001, following informal meetings of interested parties, the Board issued an Order directing the utilities to implement an interim Universal Service program, providing bill credits to the utilities’ low-income consumers identified as receiving benefits under New Jersey’s Low Income Home Energy Assistance Program (LIHEAP). This program, which had a budget of \$15 million statewide, was implemented during 2002.

During 2002, the Ratepayer Advocate participated in additional meetings convened by Staff, and submitted additional written information at the Staff’s request. In November 2002, the Board circulated for comment a “Straw Proposal” for a permanent Universal Service Fund and program. In December 2002 the Ratepayer Advocate submitted comments in support of the proposal, which includes the following key features which the Ratepayer Advocate considers crucial to a successful USF program:

- A fixed credit Percentage of Income Payment Program (PIPP). Qualifying low-income consumers would receive fixed credits on their monthly utility bills, designed to reduce their energy bills to affordable levels.
- Customers with households at or below 175% of federal Poverty levels would be eligible to participate in the program. Customers with bills exceeding affordable levels, based on a percentage of household income, would qualify for a monthly bill credit.
- Benefits would be coordinated with other energy assistance benefits, thus conserving the limited resources available through the USF, and assuring that consumers do not receive duplicate benefits.
- The “fixed credit” design would encourage energy conservation by making customers responsible for all amounts over the fixed credit.
- Program participants would be subject to the same credit and collection procedures as other customers, thus reducing administrative costs and encouraging low-income consumers to get into the habit of regular utility bill payment.
- There would be automatic screening and enrollment for customers already receiving LIHEAP and certain other benefits. Application procedures would be coordinated, with the objective of creating “one-stop shopping” for all energy assistance programs.
- The program would be administered on a statewide basis, and funded through uniform statewide per-kWh and per-therm charges.

- There would be a process for regular reporting and review of the effectiveness of the program.

The Ratepayer Advocate's comments also included the following recommendations with regard to certain specific aspects of the Staff proposal.

Initial Budget. The Staff proposed a budget of \$30 million plus start-up administrative costs. The Ratepayer Advocate determined that the more modest budget proposed by Staff is appropriate initially since there are expected to be fewer participants than under a mature program. The Ratepayer Advocate did note, however, that the budget should be reviewed as the USF program develops, so that any necessary adjustments could be made.

Benefits Cap. The Ratepayer Advocate supported Staff's proposal to place an \$1,800 "cap" on the annual energy bills used to determine a customers' fixed credit amount, provided this cap is subject to ongoing review. Further, the Ratepayer Advocate recommended that the utilities be required to make every effort to include low-income customers with annual energy bills exceeding \$1,800 in their low-income weatherization programs, and maintain records that will allow the Board to evaluate the effectiveness of those efforts.

Non-heat Customer Eligibility. The Ratepayer Advocate recommended a clarification to assure that customers who heat their homes with oil heat and other non-utility fuel sources are eligible for assistance with their electric bills.

Arrearage Forgiveness. The Straw Proposal does not include an arrearage forgiveness program. The Ratepayer Advocate proposed an arrearage forgiveness program so that the affordable bills resulting from the monthly bill credits would not become unaffordable as a result of pre-enrollment arrearages. While the Ratepayer Advocate supported the proposal as a necessary measure to conserve limited resources, it should be subject to ongoing review of the need for an arrearage forgiveness program. In the interim, the Ratepayer Advocate recommended that the utilities be encouraged to offer USF program participants long-term payment arrangements so that payments on arrearages would not exceed one percent of household income.

Utility Cost Recovery. The USF is expected to produce cost savings and other benefits for the utilities, such as reduced collection costs, bad debt expense, and higher revenue because fewer customer will be "off the system" due to disconnections for nonpayment. Ratepayer Advocate recommended that the utilities' cost recovery for the USF program be limited to their incremental costs, net of the cost savings and other system benefits they realize as a result of the program. The Ratepayer Advocate further recommended that the utilities be required to evaluate the revenue impact of the USF program using the "top down" methodology in use in Pennsylvania. This method, which is based on changes in departmental budgets, captures administrative savings more fully than the typical "bottom up" approach based on specifically identified cost elements.

Reporting Requirements. The Ratepayer Advocate recommended that, in addition to information concerning the bill payment records of participants in the program, the utilities be required to report comparable information for residential customers as a whole. This would allow the Board to evaluate progress toward the goal of allowing low-income customers to achieve bill payment records comparable to those of the residential population as a whole.

The Ratepayer further recommended that the utilities recover the cost of reporting as part of the regular cost of service, rather than through an automatic cost pass-through.

The Ratepayer Advocate will continue in 2003 to work with the Board's Staff, the utilities, government agencies, community-based organizations, and other interested parties to implement a permanent USF program.

INTERIM NET METERING STANDARDS, BPU DKT. NO. EX99030182

The Ratepayer Advocate filed comments on July 19, 1999 regarding the rulemaking on Interim Net Metering Standards. Net metering is when a customer with renewable generation capability can pump power into the grid and can only be charged for the difference between the amount of energy he has pumped in and the amount that he actually uses.

In June, 2001, the Board's rules incorporated many of the Ratepayer Advocate's recommendations. However, at the time, the appropriate interconnection standards for facilities between 10 and 100kW had not been resolved. Staff therefore requested comments on its technical recommendations in May 2002 regarding its proposal for generic interconnection requirements for net metering facilities sized 10kW to 100kW. Although the utilities themselves have incorporated technical procedures and agreed-upon requirements into their individual operations, the Board concluded that it should wait until the net metering standards become final to require the utilities to develop uniform interconnection standards.

By Board Order dated June 5, 2002, the electric distribution companies (EDC) were required to incorporate into their own technical systems the net metering interconnection requirements (which give the groundwork for the uniform standards), the framework for standardizing the costs of the EDC studies concerning implementation, and the application/agreement for net metering systems smaller than 100kW. As of the November 20, 2002, the Board ordered the Interim Net Metering Standards be published in the New Jersey Register for re-adoption. When the Standards are published, the Ratepayer Advocate will submit comments at the time of publication.

ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT (P.L. 1999, C. 23) STATUS OF TIMELINES AS OF DECEMBER 31, 2002

The following is a brief summary of the status of rulemaking, hearing and reporting requirements set forth in the *Electric Discount and Energy Competition Act* (EDECA), P.L. 1999, c. 23; *codified at N.J.S.A. 48:3-49 et seq.*

EDECA enacted, February 9, 1999

Electric Retail Choice implemented, August 1, 1999

Gas Retail Choice implemented, December 31, 1999

Electric Retail Choice and Rate Reductions (Sec. 4):

In the **PSE&G** Rate Unbundling, Stranded Cost and Restructuring proceeding, the Board issued a **Summary Order** on April 21, 1999 and a **Final Order** on August 24, 1999. On September 17, 1999, the Board issued a Bondable Stranded Cost Rate Order permitting PSE&G to securitize up to \$2.525 Billion of its stranded costs. On December 6, 2000, the New Jersey Supreme Court affirmed the ruling of the Appellate Division which upheld the PSE&G Final Order and Bondable Stranded Cost Rate Order.

The Board also issued **Final Orders** to resolve the **JCP&L (GPU Energy)** (March 7, 2001) and Atlantic Electric (Conectiv) (March 30, 2001) Rate Unbundling, Stranded Cost and Restructuring proceedings mandated by the EDECA. The Board has issued a brief Summary Order in the Rockland Electric (July 28, 1999) and a Final Order on July 22, 2002.

Within 60 Days After The Starting Date For Retail Choice:

Sec. 8(f)(1). Interim standards for **fair competition, affiliate relations, accounting and reports (electric).**

STATUS: By Order dated March 15, 2000, the Board adopted interim standards.

Sec. 10(k)(1). Interim standards for **fair competition, affiliate relations, accounting and reports (gas).**

STATUS: By Order dated March 15, 2000, the Board adopted interim standards.

Within 90 Days of the Effective Date of this Act:

Sec. 29(c). Interim standards for **electric power supplier licensing.**

STATUS: By Order dated May 13, 1999, the Board adopted interim standards; re-adopted on January 2, 2001.

Sec. 30(c). Interim standards for **gas supplier licensing.**

STATUS: By Order dated May 13, 1999, the Board adopted interim standards; re-adopted on January 2, 2001.

Sec. 36(a). Interim Standards for **customer protection (gas and electric).**

STATUS: By Order dated May 13, 1999, the Board adopted interim standards; re-adopted on January 2, 2001.

Sec. 37(a). Interim Standards for protection against **slamming (gas and electric).**

STATUS: By Order dated May 13, 1999, the Board adopted interim standards; re-adopted on January 2, 2001.

Sec. 46. Other interim standards determined necessary to effectuate the Act's provisions.

STATUS: Not available as of December 31, 2002

Not Later than 3 Months after the Starting Date for Retail Choice:

Sec. 6(a),(b). Initiate a formal proceeding to investigate the manner and mechanics by which customers are provided **customer account services (gas and electric)**, and to establish standards for such arrangements "in a timely manner."

STATUS: By a letter sent to the parties in the Fall of 1999, the Board initiated a working group proceeding, to identify issues and develop procedural recommendations which did not result in consensus. By Order dated March 3, 2000, the Board set forth a procedural schedule for a proceeding to address customer account services, anticipating a Board order resolving the issues by the end of July 2000. Hearings were held and the parties entered into settlement conferences.

Stipulations of settlement were submitted by PSE&G, ACE, JCP&L, RECO and NJNG, which were subsequently approved by the Board in 2001.

Within 120 Days of the Effective Date of this Act:

Sec. 29(a), Sec. 30(a). Deadline for obtaining **electric and gas supplier licenses** if supplier had commenced business on February 9, 1999.

STATUS: Ongoing process.

Within 4 Months of the Effective Date of this Act:

Sec. 12(a)(3). (And every four years thereafter) Initiate a proceeding which encompasses a **comprehensive resource analysis of energy programs** (CRA, DSM, renewables), and within eight months, determine the appropriate level of funding for renewable energy programs.

STATUS: By Order dated June 17, 1999, the Board set forth the parameters and a timeline for a proceeding. Hearings were subsequently held and briefs submitted. Two competing settlement proposals were submitted by different groups of parties. By Order dated August 16, 2000, the Board ordered the parties to submit answers to certain questions set forth in its Order, setting September 1, 2000 as the deadline for the last set of answers. On November 9, 2000, the Ratepayer Advocate filed a motion with the Board requesting that the utilities be required to submit additional information about energy savings. A public hearing was held on Wednesday, January 10, 2001. The Board rendered a ruling at its March 1, 2001 agenda meeting. The Board issued a Final Order on March 7, 2001. (See discussion on CRA above)

Not Later than One Year after the Starting Date for Retail Choice:

Sec. 6(a),(b). Deadline for an Order providing for competitive **customer account services (CAS)** (gas and electric).

STATUS: See discussion above.

By December 31, 1999:

Sec 10(a). All retail customers of a gas utility shall be able to **choose a gas supplier.**

STATUS: At its January 19, 2000 agenda meeting, the Board approved the stipulation of settlements presented in the **New Jersey Natural, South Jersey Gas and Elizabethtown Gas** cases without modification, and modified the stipulation of settlement presented by **PSE&G**. The Board issued a Final Order in the PSE&G case on July 31, 2000. Final issues were issued in New Jersey Natural, South Jersey Gas and Elizabethtown cases on March 30, 2001.

No Later than December 31, 2000:

Sec. 7(k). Board decision due regarding any further restrictions on competitive services offered by an electric public utility.

STATUS: No Board action as of December 31, 2002.

Sec. 10(q.). Decision on whether **non-safety related services** must be separated from gas business unit or whether other restrictions are required.

STATUS: No Board action as of December 31, 2002.

By no later than January 1, 2002:

Sec. 10(s). Decision on whether to make **basic gas supply service (BGSS)** available on a competitive basis.

STATUS: On June 6, 2001, the Board issued an Order soliciting written comments from interested parties and directing its Staff to convene a series of meetings to discuss the major issues relating to competitive basic gas supply service (BGSS) and to attempt to reach consensus in some areas. The four gas utilities presented four different BGSS proposals, and the utilities, Board Staff, the Ratepayer Advocate, and other interested parties participated in informal meetings as directed by the Board. Although the Board Order established a January, 2002 target date for a Board decision, the Board directed its Staff to convene a series of additional BGSS working group meetings in 2002. As a result of settlement negotiations, the parties were able to reach consensus and the BPU approved a joint proposal by the parties on December 16, 2002.

No Later than 3 Years after the Start of Retail Competition:

Sec. 9(c). Board decision due as to whether to make available the opportunity to provide **basic generation service** to any electric power supplier, electric public utility, or both.

STATUS: On June 6, 2001, the Board issued an Order setting forth a procedural schedule for consideration of specific proposals to implement an RFP process for basic generation service for Year 4 (8/1/02-7/31/03) of the Transition Period. The EDCs operating in the State filed a joint proposal for a state-wide, wholesale auction to procure BGS supplies for all of the EDCs simultaneously. A public/legislative hearing was held on October 4, 2001 and comments and testimony were submitted. On December 11, 2001 the Board issued an Order approving the utilities' proposed auction process to procure BGS supplies for Year 4. The auction was held on February 4, 2002. The Board considered the utilities' auction proposal at its December 10, 2001 agenda meeting, and directed its Staff to initiate a working group process for consideration of issues related to the possible competitive provision of retail BGS during Year 5 and thereafter. The Board in October 2002 approved another Auction for year 5.

Quarterly:

Sec. 9(f). Each electric public utility must submit reports to the board of all **electricity generation contracts** between the public utility and any related business segment.

STATUS: Information not made available to the Ratepayer Advocate.

No less than Every Two Years:

Sec. 8(f)(2). The Board **shall conduct audits of an electric utility's competitive business units.**

STATUS: The Board acknowledged its receipt of audit reports for the individual utilities in an Order dated October 25, 2000.

Sec. 10(k)(2). The Board **shall conduct audits of a gas utility's competitive business units.**

STATUS: The Board acknowledged its receipt of audit reports for the individual utilities in an Order dated October 25, 2000.

Periodically:

Sec. 13(g). Review and adjustment of the **market transition charge (MTC).**

STATUS: As of December 31, 2002, the electric utilities have filed their deferred balance Petitions and distribution rate requests. A review of the MTC for each utility will be undertaken in those proceedings.

Time for Initiation Not Specified:

Sec. 12(b). The Act established a “**Universal Service Fund**”(gas and electric). The Board is to determine *inter alia* what programs are to be funded as well as the level of funding.

STATUS: By Order dated June 7, 2000, the Board set forth a list of issues to be addressed in a proceeding to establish a USF, as well as a procedural schedule. The Board originally listed September 27, 2000 as the target date for an Order approving, at a minimum, interim implementation. On October 24, 2000, the Board set a date for a supplemental hearing (November 6, 2000) and for the filing of additional comments on the subject of eligibility criteria (November 2, 2000). On November 21, 2001, the Board issued an Interim Order in the Universal Service proceeding, setting forth an interim universal service program to be implemented no later than February 15, 2002. The Board directed the utilities to file a further proposals for a permanent universal service program. In December 2002, the BPU circulated for comment a proposal for a permanent program. The Ratepayer Advocate submitted initial and reply comments. See discussion of USF status above.

Sec. 29(e). Establish **alternative dispute resolution program** for electric licensure and access.

STATUS: Draft standards released March 31, 1999. The Ratepayer Advocate submitted comments on 4/22/99. Awaiting further Board action as of December 31, 2002.

Sec. 29(g). **Interim safety and service quality standards for electric suppliers.**

STATUS: Not available as of December 31, 2002.

Sec. 30(e). Establish **alternative dispute resolution program** for gas licensure and access.

STATUS: Draft standards released March 31, 1999. The Ratepayer Advocate submitted comments on April 22, 1999. No further Board Action as of January, 2003.

Sec. 30(f). **Interim safety and service quality standards for gas suppliers.**

STATUS: Not available as of December 31, 2002.

Sec. 38(a), (b). **Interim electric environmental disclosure standards.**

STATUS: By Order dated August 3, 1999, the Board issued interim standards.

Sec. 38(d). **Interim electric renewable energy portfolio standards.**

STATUS: By Order dated June 24, 1999, the Board released draft interim standards and scheduled a July 15, 1999 public hearing, with written comments accepted through July 19, 1999. (Dkt. No. EX99030182). By Order dated June 15, 2001, the Board adopted interim standards.

Sec. 38(e). **Interim electric net metering standards and safety and power quality standards**

STATUS: On June 15, 2001, the Board adopted interim net metering, safety and power quality standards effective for 18 months.

Sec. 38(c). [The Board *may* adopt, in consultation with the DEP] **electric emission portfolio standards.**

STATUS: A working group was formed in 2000 to address this issue.

Sec. 42(i). Interim standards governing **government energy aggregation (gas and electric)** programs.

STATUS: By Order dated June 24, 1999, the Board issued interim standards.

Sec. 57. Standards for the **inspection, maintenance, repair and replacement of electric distribution equipment and facilities of public utilities**, as well as standards for their operation during periods of emergency or disaster, and a schedule of penalties for violations of these standards. The Board shall require each public utility to report annually on its compliance with these standards.

STATUS: The Board convened an Electric Distribution Service Reliability and Quality Standards working group on December 22, 1999. In December 28, 1999, the Board directed that the standards draft and recommendations, be available for consideration by the Board by the first week of April 2000. Comments on the Board's draft interim

standards, were submitted on September 20, 2000. The Board adopted interim and permanent standards at its November 28, 2000 agenda meeting.

Sec.7(k)(1). (Electric) The Board shall commence the process of **independent audits**, by outside contractors, to ensure compliance with the affiliate transaction standards set out in the Act and those adopted by the Board. Upon completion of the audit process, the Board shall commence a hearing process to examine the **use of utility assets to provide competitive services**.

STATUS: The Board acknowledged its receipt of audit reports for the individual utilities in an Order dated October 25, 2000. The BPU's Audit Division will review the reports as of January, 2003.

Sec. 6(c). Interim technical standards for **gas and electric metering and information exchange**.

STATUS: The Board issued an Order addressing gas Electronic Data Exchange (EDI) standards on March 22, 2000, and an Order addressing electric EDI standards on August 16, 2000. As part of the Customer Account Services (CAS) stipulations, the parties agreed to create a CAS implementation working group. The Ratepayer Advocate actively participated in the CAS implementation working group. On August 29, 2001, the Board approved several CAS working group recommendations regarding utility billing enhancements, including provisions for internet-based data transfer plan. The CAS working group also developed a consensus Master Service Agreement for use by the electric industry and PSE&G natural gas service, which was approved by the Board on September 26, 2001.

18 Month Limit on Certain Interim Regulations

The following interim standards are **limited to an effective period of 18 months**, whereupon they may amended, adopted, readopted by the Board in accordance with the APA:

Sec. 29(c). Interim standards for **electric power supplier licensing** (issued 5/13/99).

Sec. 30(c). Interim standards for **gas supplier licensing** (issued 5/13/99).

Sec. 36(a). Interim Standards for **customer protection** (issued 5/13/99).

Sec. 37(a). Interim Standards for **protection against slamming** (issued 5/13/99).

Sec. 38(a), (b). Interim **environmental disclosure standards** (issued 8/3/99).

Sec. 38(d). Interim **renewable energy portfolio standards** (pending).

Sec. 38(e). Interim **net metering standards and safety and power quality standards** (pending).

Sec. 42(i). Interim standards for **government energy aggregation programs** (issued 6/24/99).

Sec. 46. Other interim standards determined necessary to effectuate the Act's provisions.

C. OTHER MAJOR ELECTRIC PROCEEDINGS

I/M/O Public Service Electric and Gas Company's Application for an Accounting Order Permitting it to Record a Portion of its Minimum Pension Liability as a Regulatory Asset on its Balance Sheet BPU Docket No. EO02110853

On November 13, 2002, PSE&G filed a petition with the Board seeking approval to establish a "regulatory asset" to address its under-funded pension obligation. A regulatory asset is a deferred accounting treatment for a current-period expense permitting a regulated utility to record an expense for future ratemaking consideration or recovery. Typically, a regulatory asset is established and considered for later rate recovery in a subsequent proceeding, at which it may be amortized as a recoverable expense and recovered in future rates charged to the utility's customers, notwithstanding the fact that the underlying expense was not incurred in the Test Year.

After detailed review of the Company's application and responses to discovery requests, the Ratepayer Advocate concluded that PSE&G's proposed regulatory asset treatment of the \$448 million underfunding of its pension fund would not be in the best interests of the ratepayers of New Jersey. Since the accounting treatment of the pension under-funding will not affect the pension benefits of plan participants, the Ratepayer Advocate filed a recommendation with the Board on December 5, 2002 that it reject PSE&G's proposal for regulatory asset treatment. On January 8, 2003, the Board of Public Utilities denied PSE&G's petition.

IN THE MATTER OF THE PROVISION OF THE PROVISION OF BASIC GENERATION SERVICE PURSUANT TO THE ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT OF 1999, BPU Docket No. EX01050303.

Under EDECA, by July 31, 2003 New Jersey's electric distribution companies (EDCs) were required to provide basic generation service (BGS) for customers who have not chosen a competitive supplier following the implementation of retail electric choice. BGS is also known as "provider of last resort" (POLR) or "default" service. By that same date, EDECA required the Board to issue a decision as to whether non-utility suppliers will be given the opportunity to compete to provide BGS. The Board's electric restructuring orders directed each of the EDCs to file, by August 1, 2001, their proposals to implement an RFP process to provide BGS during the one-year period from August 1, 2002 through July 31, 2003, referred to in the Board Orders as "Year 4" of the transition to electric competition. In a procedural order issued on June 6, 2001, the Board directed the EDCs to file their proposals on or before June 29, 2001 and also established an expedited schedule culminating in "public/legislative" hearings to be held by the Board in early October, 2001.

On June 29, 2001, the EDCs jointly submitted a proposal to procure BGS supplies for Year 4 for all four utilities simultaneously, by means of a single, state-wide auction. The Ratepayer Advocate was an active participant in the Board's consideration of this proposal. An auction was held on February 4, 2002 to procure BGS supply.

In July, 2002, the EDC's submitted proposals to procure BGS supplies for Year 5 for all four electric utilities. The BPU was considering whether to procure BGS supply through another statewide auction process or some other method. The Ratepayer Advocate, again was an active participant in this proceeding.

Several of the EDC's proposed placing a "retail adder" on top of the price determined at the auction which would artificially increase the price of basic generation service. The Ratepayer Advocate opposed this concept for residential and small commercial customers as these customers are not fully prepared to enter the competitive market and to "shop" for energy. The BPU agreed and did not permit the utilities to place a retail adder on the price of electricity for residential and small commercial customers. The auction for Year 5 is anticipated to be held in February 2003.

IN THE MATTER OF THE FILINGS OF THE COMPREHENSIVE RESOURCE ANALYSIS OF ENERGY PROGRAMS PURSUANT TO SECTION 12 OF THE ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT OF 1999, BPU Docket Nos. EX99050437, et al.

Beginning in the 1980s, New Jersey's electric and natural gas utility companies implemented "Demand Side Management" ("DSM") programs, designed to manage the State's need for electric capacity and energy needs by the implementation of cost-effective energy efficiency technologies. These programs, which were funded with monies collected from the utilities' ratepayers, provided financial incentives for customers and energy efficiency contractors to install energy-saving technologies such as insulation, high-efficiency lighting, appliances, and heating and cooling equipment.

EDECA required the Board of Public Utilities to initiate a Comprehensive Resource Analysis (CRA) proceeding to (1) review the utilities' existing energy efficiency programs, (2) determine the appropriate level of ratepayer funding for energy efficiency measures, and (3) establish and determine the appropriate funding levels for new programs to promote the development of renewable energy sources, such as solar energy, wind and landfill gas, that do not deplete our natural resources. In March 2001, the BPU issued an Order determining the specific programs and budgets to be implemented by the utilities through the end of 2003. The utilities currently collect approximately \$120 million annually through their rates for electric and gas service to fund the energy efficiency and renewable energy programs approved by the BPU in its March, 2001 Order.

The Ratepayer Advocate is working to ensure that these ratepayer funds are spent wisely. During the summer and fall of 2002, the Ratepayer Advocate submitted written recommendations and participated in a series of meetings convened by the BPU Staff to review and consider changes to the current programs. In November 2002, the utilities

submitted their proposed CRA programs and budgets for 2003. The utility proposal incorporated many of the Ratepayer Advocate's recommendations for changes in the CRA programs. In December 2002 the Ratepayer Advocate submitted comments on the utility filing, highlighting the following issues:

Non-Utility Control of Program Development. Until December, 2002, a collaborative group was responsible for developing energy efficiency and renewable energy programs, and monitoring their implementation. The seven New Jersey energy utilities, dominated the New Jersey Clean Energy Council ("NJCEC"), which had only one non-utility member. The Ratepayer Advocate recommended that the Board set up an independent advisory group to review CRA programs and budget. The Ratepayer Advocate's recommendations were adopted by the Board and an advisory council was established made up of representatives from the utilities, NJDEP, NJDCA, the Ratepayer Advocate and other community based organizations.

Residential Load Management Programs. Three New Jersey electric utilities operate air conditioning cycling programs in which customers receive a modest bill credit for allowing their electric utility to turn off their central air conditioning units for short periods of time during periods of peak demand. These programs have proved effective, but they are limited due to the limited amount of CRA funding for the customer bill credits. Since load programs can provide substantial price benefits for basic generation service (BGS) customers, the Ratepayer Advocate has recommended that these programs be expanded, and that the costs of these programs be recovered through BGS rates.

School Energy Efficiency Education Programs. The utilities have been providing information, activities, and tools to teach students about energy and energy conservation. The utilities' filing proposes to shut down this program. The Ratepayer Advocate believes that educating young people is an important component of the State's energy policy, and has recommended that the current program be continued, unless and until a superior program is developed and a seamless transition can be made.

Residential HVAC Programs. The electric and gas utilities provide training and equipment rebates to encourage consumers to install high efficiency heating and cooling equipment and hot water heaters. The Ratepayer Advocate's comments support the utilities' proposal to add a pilot program to encourage proper sealing of heating and cooling ducts, and to reduce the levels of financial incentives provided for installing high efficiency electric heating and cooling equipment.

Residential Retrofit Program. The utilities' former DSM programs included "residential retrofit" programs, which provided customers with on-site energy surveys conducted by qualified experts, and technical and financial assistance in installing the energy efficiency measures identified as a results of the surveys. The utilities' current "residential retrofit" program is a "do it yourself" on-line checklist. The Ratepayer Advocate had previously recommended that the Board re-instate a broad-based residential retrofit program. The utilities' November 2002 filing proposes to eliminate the current program, but does not propose a replacement program. The Ratepayer Advocate recommended that the current program be retained until a new residential retrofit program is in place.

Residential Energy Star Products Program. This program promotes the stocking and sale of products labeled as “Energy Star” under federal voluntary energy efficiency programs. The utilities’ November 2002 filing proposed a reduced budget for this program. The Ratepayer Advocate has recommended a further budget reduction, to about half of the \$5 million proposed by the utilities, as this program largely duplicates the efforts of federal agencies. The Ratepayer Advocate also recommended that the Board explore new approaches to encouraging residential consumers to purchase energy-saving products such as compact fluorescent light bulbs and fluorescent table lamps and ceiling fixtures.

Energy Star Homes. These program provide technical assistance and financial incentives to promote the construction of highly-efficient new homes. The Ratepayer Advocate’s comments support the utilities’ proposal to “cap” the level of incentives per house in order to preclude unduly large incentives for very large homes. The Ratepayer Advocate also supports a utility proposal to undertake a systematic re-evaluation of this program to assure that the program’s financial incentives are no higher than necessary.

Low-Income Energy Efficiency Programs. This program provides in-home energy audits and direct installation of insulation and energy-efficiency equipment for households with incomes below 150% of federal poverty level guidelines. The Ratepayer Advocate’s comments support the utilities’ proposal for a pilot program targeted to senior citizens in electrically heated homes, with household incomes at or below 300% of the federal poverty level.

Commercial and Industrial Construction/ “Pay for Savings”. The utilities’ Commercial and Industrial Construction program is an umbrella program with several components. Energy efficiency programs include a wide range of technical assistance and financial assistance to encourage investments in energy efficient design and equipment in new and renovated buildings. The utilities proposed three planned improvements to these programs, discussed below, but did not include a “pay for savings” program, as has been recommended by the Ratepayer Advocate over the past several months.

“Pay for savings” programs provide incentives based on the actual energy savings achieved from installed energy efficiency measures. The Ratepayer Advocate has recommended that the Board adopt a “Pay for Savings” program like those currently being implemented by the New York State Energy Research and Development Authority (“NYSERDA”).

Small Business Direct Installation Program. The utilities’ filing proposes to develop a direct installation program targeted to small businesses in Urban Enterprise Zone municipalities. The Ratepayer Advocate supports this program, which is based on previous Ratepayer Advocate recommendations.

Schools Program. Currently, school districts may apply for CRA funding as part of the utilities’ through the Commercial and Industrial Construction program. During the summer and fall of 2002, the utilities, the Ratepayer Advocate and Staff participated in meetings with organizations involved in school construction to discuss ways in which the CRA programs could be made more responsive to the needs of school districts. The utilities’ filing proposed to develop a plan to provide assistance to K-12 schools. The Ratepayer Advocate’s

comments support this proposal, which is especially important given the level of renovation and new construction projects expected to take place as a result of “Abbot” legislation.

Building Operation and Maintenance/Building Commissioning. The utilities’ filing includes a proposal to suspend the current training-oriented Building Operation and Maintenance program, and to substitute a program to encourage building commissioning, which is a process that involves designing a new construction or renovation project for energy efficiency; following up during construction to assure that equipment is installed properly; and undergoing inspections after construction, typically by an independent third party, to assure that the building is functioning as intended. The Ratepayer Advocate’s supports this proposal.

Eliminating Funding for Natural Gas Fuel Cells. Until April 2002, the utilities were committing most of the funding reserved for renewable energy sources to provide incentives for natural gas fuel cells. Fuel cells produce electricity through a chemical process utilizing hydrogen as a raw material. Natural gas fuel cells use natural gas as a source of hydrogen and are a clean source of energy. Natural gas is a non-renewable fossil fuel. Furthermore, natural gas utilities already have an incentive (i.e. increased sales) to promote this technology. In April 2002, the BPU suspended further commitments of funds to natural gas fuel cell projects. The utilities’ November 2002 filing proposed to re-introduce CRA funding for natural gas fuel cells. The Ratepayer Advocate opposed this proposal, and recommended that the Board instead encourage the natural gas utilities to provide incentives for natural gas fuel cells at levels that would provide net benefits to their other ratepayers.

Renewable Energy Sources. Other than the proposal to reinstate funding for natural gas fuel cells, the Ratepayer Advocate’s comments support the utilities’ proposals for renewable energy programs for 2003. Consistent with previous Ratepayer Advocate recommendations, the utilities’ proposal include increased incentive levels for smaller projects.

Budget Issues. The utilities’ filing notes that some utilities’ spending for the first three CRA years is expected to exceed the budgets allocated to them in the Board’s March 2001 CRA Order. The Ratepayer Advocate recommends that the Board adopt the option suggested by the utilities which provides managing costs to budget. The Ratepayer Advocate’s comments note that the budget issues raised in the utilities’ filings result, in part, from the fact that the utilities are collecting different per-kWh and per-therm charges, and therefore recommended that the Board equalize CRA charges throughout the State, before addressing the issue of budget disparities. The Ratepayer Advocate’s comments supported the utilities’ proposals to allow an individual utility a limited amount of flexibility to re-allocate funds among a particular utility’s CRA programs.

Performance Incentives and Measurement Protocols. The utilities’ filing requested that the utilities be awarded performance incentive for CRA activities. The Ratepayer Advocate’s comments oppose the utilities’ proposed incentives, which rely too much on demonstrations

of mere adequacy in delivering CRA programs and do not include an element of risk for utilities that underperform. The Ratepayer Advocate's also noted that there are substantial unresolved issues raised by earlier utility proposals to establish protocols for measuring energy savings and lost revenues resulting from CRA programs.

APPELLATE DIVISION AGREES WITH RATEPAYER ADVOCATE, CUSTOMERS, IN INTERLOCUTORY APPEAL FROM CLASS ACTION SUIT AGAINST GPU ENERGY FOR DAMAGES RESULTING FROM JULY 1999 POWER OUTAGES, NEW JERSEY APPELLATE DIV. DOCKET NO. A-2393-99T2; SUPERIOR COURT MONMOUTH COUNTY DOCKET NO. L- 3587-99 (CONSOLIDATED)

On June 14, 2000, the New Jersey Appellate Division affirmed an order of the trial court denying GPU Energy's motion to dismiss plaintiff's action, a class action suit seeking damages resulting from the extended outages in GPU's service territory in early July 1999. The Ratepayer Advocate, appearing as *amicus curiae*, successfully argued that GPU's claims, based primarily on the doctrine of primary jurisdiction in the Board were not in accord with applicable case law.

The Court ruled that the case could proceed in the trial court, that GPU's tariff did not provide it with immunity under controlling case law, and that plaintiffs' were entitled to a jury trial. The Court further noted that the Board disclaimed any jurisdictional role in the case, having conducted its own investigation into the cause of the outages. The Court also directed that the trial court designate the Ratepayer Advocate and the Board as intervenors in the action.

Pursuant to the Order of the Appellate Division, the Ratepayer Advocate continues to monitor this class action lawsuit against Jersey Central Power & Light d/b/a GPU Energy for damages resulting from the July 1999 power outages. In August, 2002, the Court entered partial summary judgment, dismissing with prejudice JCP&L's claims under the Consumer Fraud Act, common-law fraud and strict products liability. The action has now been narrowed to one negligence issue. The discovery process continues in 2003.

1/10/01 THE APPLICATION OF EAGLE POINT COGENERATION PARTNERSHIP (EAGLE POINT) AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY (PSE&G), FOR THE APPROVAL OF AN AMENDMENT AND RESTATEMENT OF THE POWER PURCHASE AND INTERCONNECTION AGREEMENT AND GAS SERVICE AGREEMENT CURRENTLY EXISTING BETWEEN EAGLE POINT AND PSE&G, BPU Docket No. EM01080489.

This Petition filed on August 14, 2001 jointly by PSE&G and Eagle Point Cogeneration Partnership (Eagle Point), an affiliate of El Paso Corporation (El Paso) which owns and operates a cogeneration facility in West Deptford, sought Board authorization for a renegotiated Purchased Power Agreement (PPA) and associated gas service agreements. The Eagle Point facility currently supplies all its power (net of on-site usage) to Public Service under a long-term PPA that runs until April 30, 2016. Under the renegotiated PPA, the Eagle Point facility would be run on a flexible basis as a merchant power plant to be dispatched on

an economic basis, not the current must-run basis, and PSE&G would receive contracted for energy either from the facility or any other available source. The amended PPA also would eliminate the requirement that Eagle Point maintain the facility's status as a "qualifying facility" under the Public Utility Regulatory Policies Act ("PURPA"). Under the renegotiated PPA, the current electric pricing formula, which varies monthly based on the price of gas, would be fixed for the remaining term of the PPA. For this restructured PPA, El Paso proposed to provide PSE&G with an up-front closing payment of \$100 million. PSE&G proposed to credit this payment to its deferred non-utility generation (NUG) energy balance to offset energy costs for its ratepayers. The Petition also requested several changes in the current gas service agreements by which PSE&G provides natural gas to Eagle Point, and two incentive payments for PSE&G's shareholders for negotiating the restructured PPA and associated gas agreements.

The Ratepayer Advocate filed comments in opposition to the restructured PPA. Specifically, the Ratepayer Advocate opposed the negotiated fixed electric pricing formula because it was based on gas costs that were significantly overstated and would result in future electric ratepayers paying higher costs than they would have under the original monthly variable pricing formula which fluctuates with actual gas costs. The Ratepayer Advocate also opposed the \$100 up-front payment as not only inadequate but unfair to future ratepayers who would bear the higher costs. The Ratepayer Advocate also opposed PSE&G's request for a 10% share of the \$100 million upfront payment, as well as a 20% share of the revenues under the amended gas agreements.

By Order dated November 8, 2001 the Board approved the restructured PPA with the fixed electric pricing and the up-front \$100 million payment, as well as the amended gas agreements. The Board rejected PSE&G's request for a 10% share of the electric payment, but approved a reduced 10% sharing on the gas agreement, provided PSE&G negotiates five additional years to the term of the gas agreement. In the event that the gas contract is not extended, PSE&G will be required to refund to its ratepayers the gas incentive payments received until that time.

On November 26, 2001 the Ratepayer Advocate filed a Motion for Reconsideration of the Board's Order, arguing that the restructured agreements would not result in a substantial reduction in PSE&G's total stranded costs, as required under section 13(l) of the Electric Discount and Energy Competition Act (EDECA), *N.J.S.A 48:3-61(l)*; that the Board failed to consider the lack of compensation to ratepayers for allowing Eagle Point to operate the facility as a merchant plant; and that the record did not support a benefit to ratepayers by the \$100 million "up-front" payment rather than reduced electric rates over the life of the contracts.

In January, 2002, the Ratepayer Advocate negotiated a settlement in which Eagle Point and Public Service agreed to a five month delay in implementing the PPA, a \$2.5 million increase in the up-front payment and made a \$500,000 contribution to provide improved technology to schools and libraries. The settlement which reflected approximately \$10 million in additional benefits to ratepayers was approved by the Board on January 9, 2002. In December 2002, the \$500,000 contribution for schools and libraries was sent to the Department of Education for distribution.

/M/O THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF A PURCHASE AND SALE AGREEMENT FOR THE SUM OF \$581,965.44, BPU Docket No. EM01070434

OnSite Energy Corporation (Onsite) is an energy services company that has two existing Standard Offer No. 2 (SO2) Energy Savings Agreements, dated December 17, 1998 and September 21, 1999. Under these long-term contracts, one for 10 years and one for 15 years, Onsite receives ongoing payments based on energy savings achieved as a result of energy conservation measures installed by Onsite.

When the Standard Offer agreements were executed, the utility's avoided costs were far in excess of today's market-based pricing. Since the utility's ratepayers bear the costs of these agreements through the Societal Benefits Charge, it has been the position of the Ratepayer Advocate that the utility should renegotiate or buy out these agreements. In furtherance of this goal, PSE&G presented for Board approval this buy-out of these two existing Onsite SO2 contracts for a lump-sum payment of \$581,965.44. PSE&G represented that the buy-out results in a savings of \$239,741.96 from the net present value of the estimated payments due to Onsite over the remaining terms of the agreements.

The Ratepayer Advocate reviewed the buy-out proposal, which discounted the present value of the contracts by approximately 25% for one of the contracts and 35% for the other. However, the Ratepayer Advocate was concerned that PSE&G intended to fully collect its alleged lost revenues through its next base rate case, even though any measurement of energy savings would cease with the completion of the buy-out. Because of the Ratepayer Advocate's insistence, PSE&G agreed to apply a 17.5% discount factor to its estimated lost revenues projected until the conclusion of its next base rate case. This agreement was incorporated in a Stipulation of Settlement approved by the Board on December 19, 2001, that became effective January 5, 2002.

/M/O PETITION OF ATLANTIC CITY ELECTRIC COMPANY REGARDING THE SALE OF CERTAIN FOSSIL GENERATION ASSETS, BPU Docket No. EM00020106.

By petition dated February 9, 2000, Atlantic City Electric Company (Atlantic) sought, *inter alia*, Board approval of the proposed sale of certain fossil generation assets, located in the states of New Jersey and Pennsylvania and consisting of Atlantic's interest in the B.L. England, Deepwater, and Keystone fossil generating plants. Atlantic is the sole owner of the B.L. England and Deepwater plants. The Conemaugh and Keystone plants are jointly owned with several other utilities, including Delmarva Power & Light Company (Delmarva, a public utility operating in the states of Delaware, Maryland and Virginia).

The proposed sale was effectuated by Conectiv, Inc (Conectiv), the corporate parent of both Atlantic and Delmarva. Pursuant to the sales agreements, NRG Energy Inc. (NRG) would purchase Atlantic's wholly-owned B.L. England and Deepwater units for \$82.3 million. NRG also agreed to pay \$96.1 million for Atlantic's interest in the Conemaugh and Keystone units. Atlantic claimed that the sale would result in stranded costs amounting to \$105 million,

and sought a finding by the Board that it could recover the total amount of its eligible stranded costs through the issuance of transition bonds.

Pursuant to the procedural schedule set by the Board, the Ratepayer Advocate propounded discovery requests on Atlantic. A public/legislative type hearing was held on June 22, 2000, and written comments and reply comments were submitted by the parties including the Ratepayer Advocate, on July 7 and July 14, 2000.

In deciding whether to approve the transaction, the Board must consider whether the sale is in the public interest. See *N.J.S.A. 48:3-59(c)(1)*. Pursuant to the EDECA, the Board must also find that sales prices reflect the market value of the assets and that the sale is in the best interest of Atlantic's ratepayers. *N.J.S.A. 48:3-59(c)(1)&(2)*. Furthermore, gains from the sale of generating units must be applied to offset other recoverable stranded costs. *N.J.S.A. 48:3-50(d)*. The Board must determine if ratepayers will benefit and not be worse off as a result of Conectiv's decision to divest.

In its comments filed with the Board, the Ratepayer Advocate argued that the transaction, as proposed, was not in the public interest and should not be approved by the Board. First, the proposed sale includes an unreasonably low allocation of the sales proceeds to Atlantic's New Jersey jurisdictional assets. More specifically, the allocation of the sales proceeds to Atlantic's wholly-owned B.L. England plant is far below other estimates of the plant's market value and does not reflect the "full market value" of the plant, as required by the EDECA. The unreasonably low allocation would result in Atlantic's New Jersey customers paying higher stranded costs surcharges and, thereby, higher rates than are necessary or appropriate. Second, Atlantic failed to fully consider bids which were more beneficial for its New Jersey ratepayers.

Third, Atlantic failed to secure a power purchase agreement to ensure a supply of power for basic generation supply (BGS) service in New Jersey, although it did provide for such a contract for its Delmarva customers. The Ratepayer Advocate also expressed its concern about the failure of Atlantic to provide an analysis of the prospective purchaser's market power for review, and Atlantic's failure to support its request for certain findings related to the exempt wholesale generator (EWG) status of the divested plants under federal law.

Finally, the Ratepayer Advocate contested the procedural format of the proceeding. While the Board provided for only a "public/legislative" type hearing, the Ratepayer Advocate asked for evidentiary hearings in which witnesses could be cross-examined, so that the Board might have the benefit of a comprehensive record upon which to base its decision.

On October 25, 2001, the Board on its own Motion, reopened the record in this matter before final determination and ordered the Company to file additional testimony by November 5, 2001 on the proposed sale price and whether it reflected the current market price of assets. The Ratepayer Advocate filed its comments after discovery on December 3, 2001. The Board conducted a one day evidentiary hearing on December 11, 2001, with initial comments filed on December 21, 2001 and reply comments filed on January 4, 2002.

On May 2, 2002, Conectiv notified the Board of the fact that the prospective purchaser, NRG had formally terminated its offer to buy the units at issue. In a letter to Board Staff dated May 23, 2002, Conectiv set forth a plan to re-auction the units. As of December 31, 2002, Conectiv still owns these units.

RATEPAYER ADVOCATE SETTLES THE ACE/PEPCO MERGER PETITION, BPU Docket No. EM01050308

On May 11, 2001, Joint Petitioners filed a Petition with the Board, seeking approval of the change in control and transfer of stock of Conectiv, Inc. ("Conectiv"), the parent company of Atlantic City Electric Company and Potomac Electric Power Company ("PEPCO"). Based in Wilmington, Delaware, Conectiv serves New Jersey ratepayers as Atlantic Electric. The Ratepayer Advocate reviewed the proposed mergers impact on competition, service reliability, rates, universal service, and Atlantic Electric's employees and issued extensive discovery requests, reviewed the details of the Company's filing with Board Staff and a number of intervenors. Evidentiary hearings were held for four days on November 13-16, 2001 at the Office of Administrative Law (OAL) in Newark, at which the Ratepayer Advocate introduced the expert testimony of five witnesses.

On December 19, 2001, all parties filed initial briefs and reply briefs on January 14, 2002. On June 16, 2002, the Joint Petitioners submitted an executed Joint Settlement Position to the ALJ signed by Board Staff, the Ratepayer Advocate, IEPNJ and New Power. On May 25, 2002, the ALJ issued an Initial Decision finding that the parties to the stipulation voluntarily agreed to a settlement in this matter and that the settlement fully disposes of the issues in controversy and is consistent with the law and the public interest. The Board adopted the ALJ's initial decision on July 3, 2002.

The following is a summary of the settlement approved by the Board:

- Conectiv's deferred energy balance will be reduced by \$30,500,000 which is the amount of money Conectiv spent in buying electricity for its customers which it could not provide because of high demand. Due to the rate caps that are in effect pursuant to EDECA, Conectiv is prohibited from increasing its rates to recover these costs during the transition period to full deregulation (From April 1999 to August 2003). EDECA allows the utility to establish a deferred balance for possible future recovery after the rate caps are lifted (August 2003).
- New Jersey ratepayers will not be responsible for paying transaction costs, i.e., investment banker fees, legal fees, filing fees, golden parachutes, inter alia.
- Conectiv agreed to support some of the key Ratepayer Advocate's principles regarding low-income programs as part of the Universal Service Fund proceeding pending before the BPU. Conectiv agreed to support an outside

(i.e., non-utility), independent administrator of the funds and Conectiv does not oppose a percentage of income program.

- At the Ratepayer Advocate's request, Conectiv made a \$1,000,000 donation to the NJ Dept. Of Education for use as the Commissioner of Education deems necessary which was received in December 2002.

EMPLOYEES:

- Conectiv's New Jersey's workforce , union & non-union, except for cause, will not be reduced for 4 years. (Current New Jersey utility operating personnel level is approximately 950 employees.)
- Conectiv will maintain for at least 5 years a New Jersey regional headquarters staffed with senior level decision-makers who are familiar with NJ and in-state issues.
- 2 of the 12 directors of Conectiv's parent company., PEPCO Holdings, Inc. (formerly New RC) Board of Directors will be chosen by Conectiv.

SERVICE QUALITY:

- Conectiv is committed to improving Atlantic City Electric's reliability and customer service performance. Conectiv agreed to specific service quality & reliability standards with financial penalties if the standards are not achieved. Customers who are subject to poor response time or performance will be given credits on their utility bill as compensation. For example, for Outage Restoration- There will be a \$50.00 payment for an outage lasting more than 24 hours and a second \$50.00 payment for an outage extending beyond 48 hours.
- Conectiv will maintain its existing New Jersey customer payment centers for at least four (4) years.
- Conectiv will maintain its existing New Jersey customer call center operations for at least four (4) years.

COMPETITION:

- Conectiv has agreed to specific anti-competitive provisions regarding transacting business between Conectiv, the regulated utility and Conectiv's unregulated generation and marketing affiliates. The Independent Energy Producers of New Jersey, a party to the proceeding, have endorsed these provisions.

NEW JERSEY REGULATORY ISSUES BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION (FERC)

Recently, the Federal Energy Regulatory Commission (FERC), which regulates the wholesale generation and transmission markets, called for sweeping changes in the scope of electric grid operations. In separate Orders issued on July 12, 2001, the FERC concluded that it was necessary for the three Independent System Operators (ISOs) operating in the northeast (PJM, New York ISO, and New England ISO) to combine to form one Regional Transmission Organization (RTO) encompassing the entire northeastern United States. New Jersey is a member of the PJM ISO.

On July 12, 2001, the FERC also initiated a mediation process for the purpose of forming a single northeast RTO. A FERC Administrative Law Judge (ALJ) presided over the mediation process, which took place over a 45 day period in which the Ratepayer Advocate participated. The ALJ issued a report on the mediation process on September 17, 2001.

The FERC then convened a five-day RTO workshop during the week of October 15-19, 2001 which focused on electricity market design and structure. State public utility commissioners and regulators as well as representatives of generators, utilities, and marketers participated in the workshops, which were presided over by the FERC Commissioners. The Ratepayer Advocate attended these RTO workshops. The Ratepayer Advocate is working with utility consumer advocate offices from other States to develop joint positions on certain RTO issues.

On November 7, 2001, the FERC released an Order which offered some insight on how it intends to proceed with its RTO initiatives. Although the FERC is still intent on establishing regional RTOs, it now envisions a greater role for state/federal cooperation in this effort.

In its Order of November 7, 2001, the FERC provided a general outline of its preferred approach to RTO formation. The FERC intends to use two parallel tracks to achieve its RTO goals:

- The first track involves resolving issues related to the geographic scope and governance of RTOs. It will be addressed in the pending specific RTO dockets (such as the PJM and Northeast Regional RTO dockets), "following consultation with state commissioners."
- The second track involves the transmission and market design rulemakings for public utilities, including RTOs in Docket RM01-12-000 (the RTO Workshop docket). FERC envisions that this track will provide the guidance needed for RTOs to accomplish the RTO functions set forth in FERC Order 2000.

The FERC also addressed other issues in its November 7, 2001 Order:

- A. Fulfillment of RTO Functions (e.g., congestion management, ancillary services, etc.) will be addressed in pending RTO dockets.
- B. State Participation/Outreach: The FERC plans to form state-federal RTO panels as a “forum for constructive dialogue between the FERC and state commissions with respect to RTO development.” and has asked its Staff for recommendations on panel structure and timelines. The FERC said that it will also institute additional outreach efforts with other stakeholders.
- C. Cost/Benefit Studies: The FERC plans to perform “additional” cost/benefit studies by establishing a working group “with state commission participation” to work with FERC Staff and the study consultant in framing further issues.
- D. Standardization of Market Rules: The FERC intends to issue a NOPR in this docket to standardize market rules. The FERC also recently issued an Advance NOPR addressing Generation Interconnection issues.
- E. Timeline/Status: The FERC abandoned its 12/1/01 deadline for RTO formation. The FERC will address in future orders the timeline for continuing RTO progress in each region. Significantly, the FERC noted that “any timetable ultimately adopted for regional integration must be based on a sound business plan with substantive buy-in from a cross-section of market participants.”

The FERC provided more information about its plan for improved state/federal relations in an Order dated November 9, 2001 in which the FERC ordered the formation of State-Federal regional panels to address RTO. The FERC intends to lay out the structure of specific panels in future notices. The Ratepayer Advocate is monitoring this development closely. On December 31, 2001, the Ratepayer Advocate formally filed a Motion for Intervention in the FERC’s RTO docket which was granted in early 2002

Meanwhile, in a challenge of one of its earlier Orders (Order 888), the issue of whether the FERC can mandate the formation of RTOs under its current statutory authority has been brought before the United States Supreme Court. On March 4, 2002, the Supreme Court decided that FERC did not exceed its jurisdiction by including retail transmission within the scope of Order No. 888’s open access requirements, and that the FERC’s decision not to regulate bundled retail transmissions was a statutorily permissible policy choice.

Finally, on July 31, 2002, the FERC issued its long-awaited NOPR addressing Standard Market Design (“SMD NOPR”) for transmission operators and energy markets (FERC Dkt. No. RM-01-000). During November 2002, the Ratepayer Advocate joined with other State consumer advocates that represent ratepayers in the States served by PJM control area and filed comments addressing certain sections of the FERC’s SMD NOPR, including the structure of the proposed independent transmission providers (“ITPs”), network access service, transmission pricing, congestion management, market design, capacity benefit margins, market monitoring, and governance.

There are several other developments which might affect the power grid serving New Jersey. Many customers of Rockland Electric - the electric utility serving a small service territory along the New York State boundary - are now served by PJM. Previously, Rockland was served primarily by the New York ISO. On December 21, 2001, FERC issued its Order granting the joint filing of Rockland and PJM to transfer Rockland transmission facilities serving New Jersey customers to PJM's control for participation in New Jersey's basic generation service auction. Meanwhile, several entities have proposed the construction of underwater electric transmission lines connecting New Jersey with New York City and Long Island. Those projects are currently under review and the Ratepayer Advocate will monitor their progress in 2003.

PJM PROCEEDINGS

THE RATEPAYER ADVOCATE PARTICIPATES IN PJM'S PUBLIC INTEREST AND ENVIRONMENTAL ORGANIZATION (PIEOUG) USER GROUP.

PJM Interconnection, L.L.C., is the Independent System Operator of the electric power grid for the states of Pennsylvania, New Jersey, Maryland, Delaware, District of Columbia and a small section of Virginia. Presently, the electric transmission grid serving New Jersey falls under the control of the PJM Interconnection, LLC (PJM). PJM was formed in 1927 to coordinate electric generation and transmission resources in the Mid-Atlantic region. Furthermore, in addition to serving as the transmission grid controller for the region as an ISO, PJM operates a wholesale energy market for the region. Its offices are located in Valley Forge, Pennsylvania. The Ratepayer Advocate is a member of a user group consisting of state consumer advocate offices within PJM's service territory and environmental organizations that are affected by PJM market decisions. In 2002, the PIEOUG actively participated in a series of working groups seeking to mitigate certain flaws in the wholesale electric marketplace. The PIEOUG has focused on: enhancement of the electric transmission system, improvements in reliability, developing a robust energy marketplace geared at bringing choice to electric customers, distributed generation, and providing consumers a greater presence in the decision making process. The PIEOUG is the only group participating in the PJM stakeholder process that addresses issues from the perspective of retail customers only.

PETITION FILED BY PJM INTERCONNECTION, L.L.C. CONCERNING CHANGES TO AMENDED AND RESTATED OPERATING AGREEMENT TO PROVIDE STATE CONSUMER ADVOCATES VOTING RIGHTS, FERC Docket No. ER 02-101-000.

On October 18, 2001, PJM Interconnection, L.L.C., filed before the FERC proposed revisions to its Operation Agreement. These revisions or amendments would modify PJM's rules governing participation on behalf of state consumer advocate groups in the PJM Members Committee. In a Motion to Intervene, the Ratepayer Advocate joined the consumer advocate offices for the States of Pennsylvania, Delaware, Maryland, and the District of Columbia to support PJM's petition. Amendment of these rules allows state consumer

advocate groups the ability to vote on matters presented before the PJM Members Committee, without the liability of being a “joint owner” of PJM. On November 29, 2001, FERC issued a letter Order approving PJM’s filing effective December 15, 2001. The Ratepayer Advocate became an active voting Member of PJM in 2002.

D. NATURAL GAS PROCEEDINGS

BGSS WORKING GROUP

The Electric Discount and Energy Competition Act (“EDECA” or the “Act”), N.J.S.A. 48:3-49 et seq., required by the Board of Public Utilities (“the Board of BPU”) to determine by January 1, 2002, if basic gas supply service (“BGSS”) should be provided on a competitive basis by the incumbent utilities, the wholesale gas suppliers, or both. N.J.S.A. 48: 3-58(s) defines BGSS as the gas supply service that is provided to any customer that has not chosen an alternate supplier, for some reason, cannot choose another gas supplier, including, for example, nonpayment for services. Currently, BGSS is not a competitive service and remains fully regulated by the Board. On January 17, 2002, the Board determined that it was still not appropriate to make BGSS a competitive service, but encouraged the development of BGSS pilot programs that address issues of pricing structure and supply reliability within a competitive market.

Under EDECA, New Jersey’s natural gas utilities are required to provide basic gas supply service (BGSS) for at least three years following the implementation of retail choice for 100% of natural gas customers, that is, through December 31, 2002 to customers who have not chosen a competitive supplier. By January 1, 2002, under EDECA the Board must issue a decision as to whether non-utility suppliers will be given the opportunity to compete to provide BGSS.

On June 6, 2001, the Board issued a procedural order soliciting interested parties’ responses to a series of questions concerning the future structure of BGSS, and directing the Board’s Staff to meet with interested parties in a “working group” type setting to discuss the major issues and explore possible areas of common ground. The Staff was directed to report back to the Board by no later than August 15, 2001, with a target date of January 2002 for a Board decision on BGSS. The Ratepayer Advocate has been an active participant in this process, including the filing of written responses to the questions posed by the Board, and attendance at a series of meetings convened by the Staff. In the responses to the Board’s questions and at the meetings, the Ratepayer Advocate made the following recommendations:

- C Competitive BGSS should be implemented at the retail level, along with a long-term consumer education program, to facilitate the transition to full retail competition.
- C BGSS should be provided as a fully regulated service, as specifically required by EDECA.
- C BGSS providers should be subject to all necessary requirements to assure reliable service.
- C Different bidding options, such as separate bids for separate customer classes, should be considered by the Board.

- C Prospective bidders should be permitted to include billing and metering options in their bids, as this may permit bidders to offer cost-saving measures such as load management.

Each of the four gas utilities presented a different BGSS proposal. These informal meetings held by the Staff did not result in a consensus among the four utilities and other interested parties.

At its December 10, 2001 agenda meeting, the Board adopted a Staff recommendation to “convene a series of high-level working groups” to consider BGSS pricing, reliability, and other issues which Staff believes require further investigation before the Board considers implementing fully competitive BGSS. The Board also adopted a Staff recommendation to establish a set of guidelines for utilities wishing to implement BGSS pilot programs. The guidelines adopted by the Board include the following:

- C Programs must be for a minimum term of two years.
- C All residential and small commercial customers must be eligible to participate.
- C Programs should include at least 10 percent of all residential and small commercial load.
- C Unregulated BGSS providers must be subject to all Board BGSS reliability requirements.
- C Utility affiliates may participate in pilot programs subject to the Board's affiliate relations standards.
- C There should be uniform pricing for all BGSS customers within each rate class, regardless of BGSS provider.
- C Issues related to customer assignment should be dealt with by the Board on a case by case basis.
- C Competitive metering and billing should be implemented in accordance with the Board's Customer Account Services Orders.

Pursuant to a directive from the BPU in 2002, the Board Staff organized a Gas Policy Group to discuss and develop implementation programs for BGSS. The working group included all the gas utilities, various gas suppliers, Board Staff and the Division of the Ratepayer Advocate. After many meetings and distribution of utility consensus documents throughout the year, the gas utilities, Board Staff and the Ratepayer Advocate reached an agreement to propose periodic and monthly BGSS pricing mechanisms to the Board. Under the periodic pricing method, all gas utilities will be allowed to increase the total bill of a residential customer using an average of 100 therms of gas per month up to a maximum 5%

each December 1st. Also, the gas utilities will have the discretion to implement an additional 5% rate increase by February 1st. Each utility will also be required to file by June 1st each year, effective October 1st, to reconcile any over or underrecoveries due to changes in gas costs during the previous 12 months. The goal is to reach a zero or near zero deferred balance by the following September 30th. Each utility will also have the discretion to pass-through a bill credit, refund or rate reduction at any time with five days notice to the Board Staff and Ratepayer Advocate.

The monthly pricing mechanism allows the utilities to charge larger commercial and industrial customers the current cost of gas in the market, with at least four days notice to the Board. All the gas utilities would be required to publish public notices of proposed rate increases within their respective service territories. On December 18, 2002, at the public agenda meeting, the BPU adopted the proposal submitted by the parties

IN/VO PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S PROPOSAL TO TRANSFER ITS RIGHTS AND OBLIGATIONS UNDER ITS GAS SUPPLY AND CAPACITY CONTRACTS AND OPERATING AGREEMENT TO AN UNREGULATED AFFILIATE AND FOR OTHER RELIEF, BPU Docket No. GM00080564.

On August 11, 2000 the Public Service Electric and Gas Company ("Public Service" or "The Company") filed a petition requesting the BPU's approval to transfer its gas supply, capacity contracts and operating agreements to an unregulated affiliate. The Company also asked the Board to allow it to purchase the gas needed to provide basic gas supply service (BGSS) from the affiliate under a proposed full Requirements Contract, for an initial term ending December 31, 2002, with the option for Public Service to renew the contract for an additional three years. Gas supplied under the Requirements Contract would be supplied at market rates, to be adjusted monthly. At the end of the initial term and any renewal of the Requirements Contract, the affiliate would have full rights to manage and control the transferred capacity contracts and operating agreements. Public Service's petition contended that, after the transfer, the affiliate would bear the financial risks associated with the contracts and that the transfer would avoid the risk of potentially significant stranded costs for Public Service's customers.

In addition to the proposed contract transfer, the Public Service petition included a proposed optional capacity release program to provide third-party suppliers with the opportunity to obtain interstate capacity to bring natural gas to their customers on Public Service's system. The Company contended that this proposal would develop a more competitive marketplace for gas in New Jersey while maintaining supply reliability.

On March 20, 2001, following discovery and review, and following unsuccessful efforts to reach a Stipulation among all parties, the Ratepayer Advocate filed a Motion to dismiss the Company's petition, on the following grounds:

- Under EDECA the Board was directed by the New Jersey legislature to determine how BGSS should be provided for consumers not receiving gas

supply service from a competitive provider. The Public Service proposal would result in the transfer of essential gas supply resources to an unregulated entity, thus restricting the Board's options for structuring BGSS.

- C The Public Service proposal would result in essentially unregulated rates for BGSS under a "no bid" contract with a Public Service affiliate, contrary to specific EDECA requirements that BGSS rates be regulated by the Board, and be based on either actual procurement costs or the results of a competitive bid.

In April and May, 2001 Public Service submitted a series of amendments to its original proposal, reflecting the negotiations among Public Service, two large energy marketers, and representatives of the Company's large industrial and electric cogeneration customers. In June, 2001, the Ratepayer Advocate submitted testimony of two expert witnesses in opposition to the Public Service proposal, as amended. Evidentiary hearings before the New Jersey Office of Administrative Law, which commenced in March, 2001 on the Company's original proposal, were completed in June, 2001. Post-hearing briefs were filed in September and October, 2001.

The Ratepayer Advocate's testimony and briefs raised a number of serious concerns about the Company proposal:

- C The proposal would result in the transfer of essential gas supply resources to an unregulated Public Service affiliate and an unknown number of unregulated energy marketers, thus defeating the Board's obligation under EDECA to exercise its full regulatory authority to assure the continuing availability of reliable, reasonably priced BGSS until a robust competitive natural gas market develops in New Jersey.
- C The proposal would commit the Board to essentially unregulated BGSS pricing, in violation of EDECA provisions specifically requiring BGSS to be provided at regulated rates, based on actual procurement costs or the results of competitive bidding.
- C The proposed transfer would limit the Board's options for determining the future structure of BGSS.
- C Ratepayers would not be compensated for the full value of the transferred assets, such as the contracts themselves and other valuable assets, including an aggregated customer load, rights to control Public Service's peaking resources and interruption rights, Public Service's gas trading operation and expert staff, and an option to turn back 50 percent of the contracts if the Requirements Contracts is not renewed in 2004 all of which were proposed by the Company to be transferred to a Public Service affiliate at no cost.
- C The transfer would grant unreasonable preferences to Public Service affiliates, in violation of the Board's Affiliate Relations Standards.

- C The proposed transactions would be likely to create uncontrolled market power in New Jersey's wholesale natural gas marketplace, by concentrating scarce gas supply resources in the hands of a few unregulated entities.
- C In addition to the potential for increased natural gas prices, the proposed transactions could allow a Public Service affiliate to exercise market power in the wholesale natural gas market to manipulate wholesale electric prices for the benefit of Public Service's electric generation affiliate.
- C The Company proposal, as modified, would not provide tangible ratepayer benefits, and does not represent the interests of ordinary consumers, but represents the interests of Public Service, a few large marketers, and the Company's largest customers, who would be exempt from the provisions which would adversely affect residential and smaller industrial and commercial customers.

During the briefing stage, Public Service further modified its position in response to certain issues raised. In late October, 2001, the Ratepayer Advocate submitted a supplemental brief noting that the Company's further modifications did not address the concerns stated in the Ratepayer Advocate's testimony and previously filed briefs.

Following the resignation of the Administrative Law Judge who conducted the evidentiary hearings, this matter was recalled from the Office of Administrative Law for review and decision by the Board. On January 9, 2002 the Board approved the Company's proposal.

On April 17, 2002, the Board issued its Order accepting the Stipulation of Settlement executed by the Company, Shell, Enron, and New Power Co. Mid Atlantic Power Supply Association ("MAPSA") did not oppose the settlement. The Ratepayer Advocate and Board Staff did not sign the settlement. After review of the Stipulation of Settlement, First and Second Addenda to the Stipulation, the revised Requirements Contract between PSE&G and Newco to supply gas to PSE&G's customers and all the briefs submitted by the parties, the Board approved the transfer of the Company's interstate capacity, storage and supply contracts to Newco. The Ratepayer Advocate's Motion to Dismiss the petition was also denied. However, the Board did emphasize that it retained jurisdiction over the regulation of basic gas supply service ("BGSS") rates to consumers as required by EDECA.

On May 1, 2002, the Ratepayer Advocate filed a Motion for Reconsideration of the Board's April 17, 2002 Order. On October 31, 2002, the Board issued its decision to deny the Ratepayer Advocate's motion, with one exception. Specifically, the Board agreed with the position of the Ratepayer Advocate that the Board should retain jurisdiction to review the valuation of the contracts until their expiration on October 31, 2016. The Board thereafter denied any further modification to its April 17, 2002 Order.

IN/OUT THE PETITION OF NUI UTILITIES, INC. D/B/A ELIZABETHTOWN GAS COMPANY FOR APPROVAL OF INCREASED BASE TARIFF RATES AND CHARGES FOR GAS SERVICE AND OTHER TARIFF REVISIONS BPU DOCKET NO. GR02040245

On April 16, 2002, NUI, Inc. d/b/a/ Elizabethtown Gas Company ("Elizabethtown" or "Company") filed a petition before the BPU requesting an increase of approximately 9.3% in their base rates, or \$28.6 million annually in revenues. The Company's filing was transmitted to the Office of Administrative Law for evidentiary hearings. A prehearing conference was held on June 20, 2002. Public hearings were held on September 17, 2002 and September 18, 2002 in Rahway and Flemington, New Jersey, respectively.

The Ratepayer Advocate, Board Staff, General Motors Corporation ("GM") and the New Jersey Large Energy Users Coalition ("NJLEUC") all served numerous discovery requests upon the Company. The Ratepayer Advocate filed testimony from six witnesses to rebut the Company's case. It was the position of the Ratepayer Advocate that the information submitted by Elizabethtown, based upon nine months actual data, supported only a \$7.5 million increase in revenue.

Based upon settlement negotiations among the parties and review of further data submitted by the Company, it was stipulated that the rate increase would be 5.1% or an annual revenue increase of \$14.25 million. The revenue requirement entails an after-tax return on equity of 10% and an overall return on rate base of 7.95%. The revenue increase will be spread over all rate classes on a uniform percentage basis. The Company also agreed to charge no more than 18% annually for late payment; eliminate a proposed \$3.00 service charge for credit card payments; and maintain a \$10 returned check fee. Furthermore, the Company accepted the Ratepayer Advocate's recommendation to make a \$500,000 donation to the Department of Education to be used for the "Schools of Excellence" Program. The stipulation was submitted to the BPU at its November 20, 2002 public meeting and was unanimously approved without modification. The \$500,000 donation was received by the Department of Education in December, 2002.

IN/OUT THE PETITION OF SOUTH JERSEY GAS COMPANY TO INCREASE ITS LEVELIZED GAS ADJUSTMENT CLAUSE; BPU DOCKET NO. GR00050293

As a result of the volatile gas price spikes in the summer of 2000, gas costs and rate issues concerning South Jersey Gas Company's 1999 LGAC filing were amended to include these 2000-2001 increases and were subsequently handled by the Board in a generic proceeding with other gas utilities. The remaining issues in the LGACs were transmitted to the Office of Administrative Law for resolution. An Initial Decision was rendered on November 26, 2001 accepting the terms of the Stipulation of Settlement between the parties. The Stipulation included a correction in ratepayers' favor of a \$1.8 million accounting error and a credit to ratepayers of \$1.3 million in interest on refunds from interstate pipelines. Additionally, the Company agreed not to seek recovery of one-third of the fixed costs of certain interstate storage and pipeline capacity contracts, resulting in approximately \$0.7 million, for the 2000-

01 LGAC year. On January 23, 2002, the Board adopted the Initial Decision and Stipulation of Settlement without modification.

/M/O THE MOTION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY TO INCREASE THE LEVEL OF THE GAS DEMAND SIDE ADJUSTMENT FACTOR AND TO MAKE CHANGES IN TARIFF RATES; BPU DOCKET NO. GR01040280

On April 30, 2001, Public Service Electric & Gas Company ("PSE&G" or "The Company") filed a motion before the BPU seeking authorization to increase the level of its gas Demand Side Adjustment Factor ("DSAF") to become effective on January 1, 2002. The Company also requested a declaratory ruling for costs incurred for electric Demand Side Management ("DSM") programs and review of such costs. In EDECA, DSM programs were referred to as Comprehensive Resource Analysis Programs ("CRA"). (In 2002, the Board recently renamed the CRA program to the NJ Clean Energy Program.) These programs were adopted by the Board to promote energy efficiency and encourage development of renewable resources. The Company's proposed increase in its gas DSAF would have resulted in approximately \$32.7 million. The matter was transmitted to the OAL and assigned to an ALJ for resolution. Public hearings were held on August 7, 2001 and August 8, 2001 in Hackensack and New Brunswick, respectively.

The Ratepayer Advocate submitted testimony to rebut the Company's petition. After numerous discovery requests and submission of surrebuttal testimony an evidentiary hearing was held on November 28, 2001. Initial and reply briefs were submitted to the ALJ by all parties. On July 17, 2002, a Stipulation of Settlement was executed by all parties. Major elements of the settlement included disallowance of \$200,000 for various CRA programs, non-utility administration of the New Jersey Comfort Partners low-income program, a gas DSAF rate of 1.2824 cents per therm sold which would result in a 1% increase in costs to the typical residential ratepayer that uses 100 therms.

On July 24, 2002, the ALJ issued the Initial Decision which accepted the Stipulation of Settlement by the parties. An Addendum to the Settlement was subsequently negotiated by the parties as a result of concerns raised by Board Staff. On October 9, 2002, the parties executed the Addendum to the Settlement which clarified that the Company's gas DSAF would be subject to audit in the Board's review of the electric Societal Benefits Clause proceeding pursuant to the Board Order of July 22, 2002. On October 31, 2002, the Board adopted the Initial Decision and Addendum to the Settlement.

/M/O THE PETITION OF PUBLIC SERVICE ELECTRIC & GAS COMPANY PROPOSAL FOR AN INCREASE IN RESIDENTIAL BGSS COMMODITY CHARGES F/K/A LGAC AND FOR CHANGES IN THE GAS TARIFF PURSUANT TO NJSA 48:2-21 AND NJSA 48:2-21.1, (BPU DOCKET NO. PENDING)

On September 27, 2002, PSE&G Company filed a Petition requesting the Board to approve:

- an increase in its BGSS-RSG Commodity Service from the current 59.7827 cents per therm (including New Jersey Sales and Use Tax ("NJSUT")) to 66.7257 cents per therm (including NJSUT)
- an increase from its BGSS-RSGM residential multiple family default Commodity Service from 56.0727 cents per therm (including NJSUT) to 63.0157 cents per therm (including NJSUT) for service rendered as of November 1, 2002;
- a requirement that the Company be allowed additional revenue of \$89 million for the period from November 1, 2002 through August 31, 2002.

According to PSE&G, this increase would result in additional revenues of \$89 million, or an additional 7.4% on the average residential heating customer bill. Of this amount, the Company claimed that \$82 million was under recoveries from the winter and spring of 2001, including under recovery of fixed gas charges from its interstate pipeline companies.

The Ratepayer Advocate submitted comments on January 2, 2003 in which we did not object to a provisional increase of 7.4% subject to refund. The Board will decide this matter on January 8, 2003.

I/M/O THE PETITION OF SOUTH JERSEY GAS COMPANY TO MAINTAIN THE LEVEL OF ITS LGAC, BPU DOCKET NO. GR02090645

On September 11, 2002, the Company proposed to maintain the level of its 2002-2003 Levelized Gas Adjustment Clause ("LGAC"), which is \$0.3733 per therm. According to the Company, the proposal to maintain this charge will have no effect on the monthly bills for residential heating customer using 200 therms per month. The matter was transferred to the AOL as of October 15, 2002. As of January 2003, the Ratepayer Advocate is preparing discovery to propound upon the Company.

I/M/O THE PETITION OF SOUTH JERSEY GAS COMPANY FOR AUTHORIZATION TO TRANSFER ITS APPLIANCE SERVICE BUSINESS TO A NEWLY CREATED COMPANY, AND IN CONNECTION THEREWITH FOR A. APPROVAL OF ASSOCIATED SERVICE AGREEMENTS; B. WAIVER OF ADVERTISING AND BIDDING REQUIREMENTS; AND C. AUTHORIZATION TO WITHDRAW APPENDIX B FROM SOUTH JERSEY GAS COMPANY'S TARIFF, BPU DOCKET NO. PENDING

On August 16, 2002, SJG proposed to transfer its non-safety, non-emergency related appliance service repair and appliance service repair contract business to a newly created limited liability company. This transaction will remove SJG from the business of providing non-safety related non-emergency appliance service.

As of January 2003, the Ratepayer Advocate is preparing discovery to propound upon the Company.

I/M/O THE PETITION OF NJNG FOR AN ANNUAL REVIEW AND APPROVAL OF ITS BASIC GAS SUPPLY SERVICE GAS COST RECOVERY FACTOR (FORMERLY LEVELIZED GAS ADJUSTMENT), BPU DOCKET NO. GR02100760

On October 17, 2002, the Company proposed to increase its pre-tax Gas Cost Recovery billing factor for retail sales customers from its current pre-tax level of \$0.0260 per therm to \$0.2325 per therm, resulting in an effective pre-tax adjustment clause increase of \$0.0265 per therm, also effective December 1, 2002 and an after-tax adjustment clause increase of \$0.0281 per therm, effective December 1, 2002. This would represent a 3% price increase for a residential heating customer using 100 therms per month.

Also, the Company proposes to adjust its rates on a provisional basis, effective February 1, 2003 to reflect increases or decreases in gas costs actually incurred and recovered by the Company through the end of calendar year 2002. The Company is planning to provide further information to support this request by January 15, 2003. A public hearing is scheduled for January 7, 2003 in Freehold, New Jersey. As of January 2003, the Ratepayer Advocate is preparing discovery to serve upon the Company.

I/M/O THE PETITION OF SOUTH JERSEY GAS COMPANY FOR APPROVAL OF A STANDARD GAS SERVICE AGREEMENT AND A STANDARD GAS SERVICE AGREEMENT ADDENDUM, BPU DOCKET NO. GR02070414

On July 15, 2002, the Company requested the approval of special negotiated rates between itself and its industrial customer Johnson Matthey, a multinational company that manufactures specialty chemicals. Johnson Matthey intends to build a cogeneration facility. According to the Company, without this rate adjustment South Jersey's existing tariff will not make the project financially viable for Johnson Matthey causing Johnson Matthey to construct a bypass pipeline through which to receive natural gas rather than purchasing from the Company. The Company has made a confidential rate reduction request, since all sales to Johnson Matthey, totaling \$256,000 annually, would be lost if Johnson Matthey does construct the bypass pipeline.

The Company has responded to discovery requests sent out by the Ratepayer Advocate. On October 30, 2002, a meeting was held among representatives from this office, Board Staff and the Company in order to discuss a draft stipulation provided by the Company. At the meeting, the Company agreed to provide a revised stipulation that addresses issues such as confidentiality, qualifying facility information and an expository formula regarding the creation of the rate. As of January, 2003 the parties are awaiting a draft of a revised stipulation from the Company.

I/M/O THE PETITION OF SOUTH JERSEY GAS COMPANY TO CHANGE THE LEVEL OF ITS SOCIETAL BENEFITS CHARGE, BPU DOCKET NO. GO002080622

On August 30, 2002, South Jersey Gas Company filed a Petition to recover through

the Societal Benefits Charge: 1. its Remediation Adjustment Clause (RAC) charge; 2. its Comprehensive Resource Analysis (CRA) charge; 3. its Consumer Education Program ("CEP") charge, and; 4. costs associated with its contribution to the Universal Service Fund.

The Company also proposed that the same rate used to calculate carrying costs on unamortized RAC balances be used to calculate the deferred tax benefits arising from the RAC. Additionally, the Company requests that its tariff be amended to provide for SBC charges to accrue to customers on a volumetric basis. Finally, the Company requests cost recovery from Third Party Claims.

The Company's proposal would result in a rate increase for a typical residential heating customer who uses 200 therms of gas in a winter month of \$2.86, or approximately 1.25%.

As of January 1, 2003, the Ratepayer Advocate is preparing discovery requests. The public hearing is scheduled for January 29, 2003 in Voorhees, New Jersey.

III. TELECOMMUNICATIONS

A. INTRODUCTION

The statutory mandate of the Ratepayer Advocate to advance and protect the interests of all classes of consumers of essential services regulated as utilities in New Jersey has particular reference to the telecommunications and cable television industries. The broad reach of the responsibility given to the Ratepayer Advocate results in this office being a party to a large number of proceedings before the Board of Public Utilities. Since the Federal Telecommunications Act of 1996 declared the national policy for all telecommunications markets to be competitive, the caseload of the Ratepayer Advocate has grown exponentially as a significant number of commercial entities seek to compete in the telecommunications marketplace resulting in an ever increasing volume of new cases and new issues. Some matters are decided largely on the basis of written comments to the Board, but there are also many complex contested matters, implicating very significant issues of public policy, that explore new and uncharted areas of telecommunications regulation and deregulation.

The Ratepayer Advocate supports telecommunications competition in New Jersey since only vigorous competition can provide the best prospects for the greatest benefits to New Jersey's economy as well as for all New Jersey's consumers of telecommunications services. Since New Jersey has the highest population density of all the states in the nation, it should be among the lowest cost jurisdictions for delivery of network services of all kinds, including telecommunications. In every telecommunications proceeding, the Ratepayer Advocate's efforts on behalf of the state's ratepayers seek to ensure that the prices charged by carriers to consumers as well as competing carriers wishing to interconnect their networks, reflect the inherent economies of providing telecommunications in a high population density environment. It is clear that competitive pricing and advanced technology can encourage businesses, large and small, to remain in the state and others to consider relocation to New Jersey. But, low income, retired persons, and others on limited incomes must not be excluded from access to the sophisticated technology essential to educational and economic success now and in the future.

B. TELECOMMUNICATIONS MATTERS BEFORE THE BOARD OF PUBLIC UTILITIES

APPELLATE DECISION RULES IN FAVOR OF RATEPAYER ADVOCATE, ORDERS BOARD TO RECONSIDER DIRECTORY ASSISTANCE DECISION, BPU Docket No. TT97120889

On December 12, 1997, Verizon New Jersey ("Verizon NJ") filed a Petition with the Board seeking approval for the reclassification of its Directory Assistance Services ("DAS") from rate regulated to competitive services. In its Petition, Verizon NJ claimed that its DAS services met the statutory requirements outlined in the *N.J.S.A. 48:2-21.19(b)* (i.e., presence of other competitors; availability of like or substitute services in the relevant geographic area; and evidence of ease of market entry).

The Ratepayer Advocate submitted comments to the Board, stating that the Board could determine the merits of Verizon NJ's petition only after it had met the statutory requirements of the provision of "notice and hearing," set forth in *N.J.S.A. 48:2-21.19(b)*. The Ratepayer Advocate also suggested that a review of Verizon NJ's Petition could logically take place during the upcoming formal review of Verizon NJ's Plan for Alternative Regulation, which was due to expire on December 31, 1999.

Verizon NJ filed responses to the comments of the Ratepayer Advocate, in which the Company argued that the statutory requirement for "notice and hearing" did not compel the Board to provide a full evidentiary hearing with "live" testimony. Verizon NJ also rejected the Ratepayer Advocate's suggestion to investigate the Petition during the pending review of Verizon NJ's Plan, and, instead, requested that the Board issue a decision on its Petition based solely on the papers provided, without any opportunity for cross-examination or a hearing on the merits.

The Board did not convene a hearing to adjudicate the Petition, as requested by the Ratepayer Advocate, and at its Agenda Meeting on August 31, 1999, approved the Petition without providing any type of hearing, evidentiary or otherwise, in direct contradiction to the requirements for a hearing pursuant to *N.J.S.A. 48:2-21.19(b)*. In its Order, the Board adopted Verizon NJ's position that "the statute does not require an evidentiary hearing when the facts in issue are in the nature of legislative facts."

The Ratepayer Advocate appealed the Board's Decision to the Appellate Division of the New Jersey Superior Court on October 27, 1999. In briefs submitted to the Court, the Ratepayer Advocate opined that the Board's failure to provide evidentiary hearings prior to a final resolution of Verizon NJ's petition was not only a violation of the applicable statutory requirements, but in effect, prevented the Ratepayer Advocate from performing its mandated duties to represent all ratepayers in all proceedings before the Board. In July 2001, the Appellate Division ruled in favor of the Ratepayer Advocate, stating that the applicable statute, *N.J.S.A. 48:2-21.19(b)*, allows the Board to reclassify services only after "notice and hearing," and stated unequivocally that this statutory language undermined the Board's argument that formal hearings were not necessary. The Court declared that "[t]he Board's argument misses an essential point. The governing statute unambiguously requires a hearing before the determination can rightfully be made. It is not a requirement that can be ignored or be seen to invite avoidance rationale," and remanded the proceeding to the Board for further consideration.

Upon remand, the Board initiated a new proceeding and required Verizon NJ to provide updated information in support of its petition to reclassify DAS. The Ratepayer Advocate has filed testimony rebutting Verizon NJ's claims that DAS services meet the statutory criteria to be deemed competitive at this time. A public hearing is scheduled for January 27, 2003, at the Board's offices in Newark. Formal evidentiary hearings, at which witnesses for Verizon New Jersey and Ratepayer Advocate will be cross-examined, are scheduled for January 27 and 28, 2003, also at the Board's offices in Newark.

RATEPAYER ADVOCATE PROPOSES CONSUMER FRIENDLY PRO-COMPETITIVE PLAN FOR ALTERNATIVE REGULATION OF VERIZON NJ IN RESPONSE TO VERIZON'S NEW PLAN REPLACING ITS PETITION I/M/O APPLICATION OF VERIZON NEW JERSEY INC FOR APPROVAL (I) OF A NEW PLAN FOR AN ALTERNATIVE FORM OF REGULATION, AND, (II) TO RECLASSIFY MULTI- LINE RATE REGULATED BUSINESS SERVICES AS COMPETITIVE SERVICES, AND COMPLIANCE FILING; BPU Docket No. TO01020095

Since 1993, Verizon NJ has been regulated by the Board under an alternative form of regulation, pursuant to the New Jersey Telecommunications Act of 1992, *N.J.S.A. 48:2-21.16 et seq.* Its initial proposal for an alternative form of regulation approved in 1993 replaced traditional rate base/rate of return regulation with an alternative regulatory scheme which granted the Company greater freedom to set rates and receive profits in return for the deployment of advanced telecommunications technologies throughout the State. Verizon's alternative regulation plan, "PAR", was scheduled to terminate on December 31, 1999. However, the Board extended the term of that initial PAR for an additional year. On December 30, 1999, Verizon filed a petition called the Competitive Telecommunications Plan ("CTP"), a modified plan for alternative regulation. Following an evidentiary proceeding at which the Ratepayer Advocate opposed its provisions, Verizon NJ withdrew its plan and the Board extended its initial Plan an additional year until December 2001.

On February 15, 2001 Verizon NJ filed a new plan for alternative regulation ("PAR-2"). The Ratepayer Advocate filed testimony and evidentiary hearings were held on all issues including structural separation. In PAR-2, Verizon NJ did not propose to change residential basic exchange service ("RBES"), but did propose to reclassify as competitive all business services of more than one line. The new proposal's premise was that the local business exchange service market in New Jersey was fully competitive. The Ratepayer Advocate analyzed this new filing, contested the basis of Verizon's petition, and submitted an affirmative proposal for alternative regulation of Verizon NJ that would provide verifiable consumer protections and benefits.

An analysis of Verizon NJ's proposed plan and that of the Ratepayer Advocate illuminates the beneficial components of the Ratepayer Advocate's proposal for alternative regulation in keeping with the objectives of the 1996 Telecommunications Act. Specifically:

- Verizon's proposal made no commitment, promise or guarantee to maintain the current RBES rate;
- Verizon sought to reclassify two or more business lines as competitive and hence unregulated; however, absent facilities based competition--as contemplated by the 1996 federal Telecommunications Act -- or verifiable evidence of efficient competition in 180 Verizon rate centers, the small business sector would be the hardest hit by Verizon's proposed transformation.

- Even though the matter of sharing merger savings from the NYNEX and GTE mergers was specifically deferred by the Board to this proceeding, Verizon did not address how it would distribute merger savings to ratepayers.
- The Ratepayer Advocate urged automatic enrollment for Lifeline eligible customers.
- The Ratepayer Advocate proposed modifications to the current Service Quality Index used to measure Verizon's performance record regarding installation and maintenance of service, network reliability and call center performance.

In 2001, The Ratepayer Advocate filed testimony and evidentiary hearings were held on all issues, including structural separation.

On June 19, 2002, the Board of Public Utilities announced its decision. A written Order is still pending as of January, 2003. The Board's oral decision provided a balance of interests between Verizon's shareholders and its customers. The Board adopted, in large part, many of the consumer friendly positions advanced by the Ratepayer Advocate, including:

- An expanded Lifeline Program to benefit the low income and senior population via automatic enrollment which is anticipated to permit upwards of 300,000 eligible persons and families to obtain low cost local telephone service;
- An augmented Access New Jersey program to assist schools and libraries (\$55 million for equipment over five years) and extended discounts to the year 2014. Additionally, schools will now be able to obtain federal Universal Fund e-rate discounts over and above the discounts available under Access New Jersey thereby providing the fullest extent of benefit possible;
- Merger savings arising from the NYNEX/New Jersey Bell and the GTE/Bell Atlantic mergers were allocated to support the programmatic enhancements to schools and libraries as well as automatic enrollment in Lifeline;
- Establishment of new customer service quality metrics that stand to provide consumers with better service quality;
- No new Alternative Regulation Plans will be considered for at least four years from the start of the newly adopted plan; therefore, existing affordable rates will continue and not increase for a minimum of four years.

Throughout the proceeding, the Ratepayer Advocate argued for support of consumer benefits in the Board's final decision.

BOARD ESTABLISHES NEW RATES TO BE CHARGED BY VERIZON NJ FOR UNBUNDLED NETWORK ELEMENTS (“UNEs”) PROVIDED TO COMPETITORS, BPU Docket No. TO00060356

The Ratepayer Advocate challenged the lawfulness of the unbundled network element (“UNE”) rates established by the Board in the 1997 generic proceeding in U.S. District Court.

In 1997, the Board had set the statewide average loop rate at \$16.21 per month. The Ratepayer Advocate argued that by setting this charge at almost twice Verizon NJ’s price of local service (\$8.19 per month), local competition for residential and small business was slow to develop, and consumers were denied the benefits of competition that a more reasonable rate would have provided. In 2000, after a decision by the Court which directed a remand to the Board, it sent a letter in June 2000 announcing a list of issues to be addressed in the remand of Verizon NJ unbundled network element rates and associated issues.

Evidentiary hearings in the UNE case started on November 28, 2000 and continued for 18 days. During the proceeding the Ratepayer Advocate presented expert witnesses to analyze and propose changes to the various cost proposals submitted by the major carriers, including Verizon, AT&T, Sprint, MCI WorldCom, Covad, NEXTLINK, Cablevision Lightpath, Conectiv Communications, New Jersey Cable Telecommunications Association, Prism Communications, Intermedia Communications, Adelphia Business Solutions, CompTel, and a coalition of New Jersey wireless carriers.

Section 251 of the Federal Act requires incumbent local exchange carriers (“ILECs”), such as Verizon NJ, to provide competing telecommunications carriers with interconnection and access to unbundled network elements (“UNEs”) at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

Interconnection is the ability of a competitor’s telephone network to interface or transfer telephone calls and other information from itself to another company’s network. Unbundled network elements are, essentially, all the parts of the telephone network that are used for the transmission of a phone call. By permitting competitors access to all or parts of the incumbent carrier’s network for a fee so that competitors can “rent” the existing network, Congress determined that competitors should not be required to build their own networks from scratch as prohibitively expensive and time-consuming.

Section 252 established the pricing standards which states are to consider when setting the rates at which the incumbent must offer interconnection to its network. The most significant standard is that when setting the rate for interconnection to an incumbent’s network, the state must base the rate on a forward-looking cost, or, the cost which would be required to build an efficient network today.

On November 20, 2001, the Board set new wholesale rates that Verizon NJ can charge to competitors for interconnection with its network, which are approximately 41% lower than the initial rates set in 1997. The Board’s decision reduced the average cost for competitors to lease Verizon’s local loop from \$16.21 to \$9.52. The Board also established an Unbundled Network Elements Platform (“UNE-P”) rate of \$13.93, a 38% reduction from the existing rate

of \$22.42. The UNE-P combines the local loop and switching elements of Verizon's network in a single package for use by competitors. The Board also adopted the Ratepayer Advocate's recommendations for a weighted 8.8% cost of capital and debt/equity ratio to be used in the development of recurring and non recurring rates. The Board issued its Final Order on March 6, 2002.

On July 15, 2002, the Board announced its decision on various requests for reconsideration, announcing that (1) it was lowering the local switching rates to a level comparable to New York, (2) reducing the service order charges for changing optional vertical services such as call waiting and caller ID, and (3) reducing the rates charged for access to data such as daily usage files ("DUF charges"). Although the port rate was increased to \$1.91 from \$0.73, the reduction in local switching rates (originating rates were reduced to \$0.001203 per minute from \$0.002773 per minute and terminating rates were reduced to \$0.001171 from \$0.002508 per minute), more than offsets the increase in the port charge.

More importantly, in 2002, both AT&T and WorldCom announced and began implementing new residential service offerings to consumers for the first time in New Jersey. This may be the beginning of competition for residential and small business customers in New Jersey so that the goals of the Federal Act can become a reality.

DUF PROCEEDING AND LOOP QUALIFICATION AND OTHER VERIZON NJ ISSUES

In the Order on Reconsideration issued on September 13, 2002, the Board directed further proceedings be held with respect to several matters.

- The Board directed that Verizon file, no later than September 2003 (the expiration date for Verizon's reduced "hot cut" rates), a proposal to evaluate whether the hot cut rates approved need to be revised based upon the current cost. A hot cut is the procedure used to change over an end-user customer to a new local service provider. The hot cut rate is the charge for completing the change in service paid by the new service provider. In addition, the Board directed Staff to reexamine all hot cut rates six months prior to their expiration to determine whether automation of hot cuts is possible and what should be the just and reasonable forward-looking rates for them.
- The Board directed further review of Daily Usage File ("DUF") rates and loop qualification rates (convert from recurring charge to non-recurring charge) to commence with the issuance of the Order on Reconsideration in accordance with the following schedule: (A) Discovery in conformance with *N.J.A.C. 1:1-10.1 et seq* began immediately for the DUF issue, and loop qualification discovery began with the filing of Verizon's loop qualification testimony; (B) Updated DUF testimony and loop qualification testimony was filed on October 14, 2002, accompanied by all supporting documents and work papers; (C) Discovery concluded on December 12, 2002; (D) Reply Testimony was filed on December 23, 2002; and (E) the dates for hearing and briefs have not been announced by the Board as of January, 2003.

- The Board also directed Verizon to make a compliance filing containing the rates, terms and conditions of all of Verizon's wholesale services, including complete descriptions of each wholesale service including (A) The filing must demonstrate compliance with the Final Order and the Order on Reconsideration; (B) The filing was made on November 12, 2002; (C) The filing was also served simultaneously on all active parties and was posted on Verizon's Web site; (D) Interested parties submitted written comments in writing to the Board with copies to the service list on December 5, 2002; (E) Verizon to respond on January 6, 2003; (F) The filing does not relieve Verizon of its duty to negotiate the terms and conditions of an agreement under Sections 251 and 252 of the Act; and (G) Subsequent to the approval of the filing, any changes or revisions to the offerings contained in the compliance filing, including those proposed to be made because of changes in Federal or State law, require Verizon to file a petition for and receive Board approval before implementation of the proposed change. After obtaining a brief extension, Verizon NJ filed its proposed wholesale tariff with the Board on November 12, 2002. The Ratepayer Advocate has reviewed the tariff and has filed with the Board a series of substantive comments. The Ratepayer Advocate is concerned with the effect of this tariff on the interconnection process set forth in the Telecommunications Act, and the resultant affects on competition and will continue to participate in these proceedings in 2003.

VERIZON NEW JERSEY, INC. APPEALS THE BOARD'S UNE ORDER TO THE U.S. DISTRICT COURT

On November 7, 2002 Verizon NJ filed a lawsuit in the United States District Court for the District of New Jersey (*Verizon New Jersey Inc. v The New Jersey Board of Public Utilities, et al*) challenging certain of the UNE rates set by the Board. Although the Ratepayer Advocate has not been named as a party in the lawsuit, the Ratepayer Advocate intends to participate in this litigation, since we believe that the rates set by the Board represent a first step in achieving a more competitive marketplace and will file a motion in January, 2003, for leave to appear as *amicus curiae*.

BOARD TO IMPLEMENT RULE SUBJECTING ALL CARRIERS THAT PROVIDE LOCAL EXCHANGE SERVICE OR XDSL/ADVANCED SERVICES IN NEW JERSEY TO REPORTING REQUIREMENTS

On October 21, 2002, The Ratepayer Advocate filed comments with the New Jersey Board of Public Utilities on the draft rule requiring Incumbent Local Exchange Carriers ("ILECs"), Competitive Local Exchange Carriers ("CLECs"), and Data Local Exchange Carriers ("DLECs") that provide local exchange service in New Jersey, to report specific information for the purposes of tracking the growth of competition in New Jersey.

The Ratepayer Advocate made several recommendations to the Board with the purpose of broadening the scope of the reporting requirements and streamlining the filing process. The Ratepayer Advocate's major recommendations for Board action are as follows:

- The Board should require all carriers to report total New Jersey operating revenues and operating expenses for the prior year. This requirement will illustrate whether the carriers are financially viable and able to conduct upgrades of their telephone and data systems, to the benefit of New Jersey ratepayers.
- The Board should require carriers to report the total number of switched access lines separately for Business and Residential. The Business lines must then be broken down into three categories: (1) Analog single line, (2) Analog multi-line, and (3) Digital, and the Residential lines broken down by (1) Analog, (2) Digital.
- The Board should allow those carriers who are required to file Form 477 with the FCC, to also file the Form with the Board because the data reported on Form 477 overlaps with some of the data requested by the Board.
- The Board's filing date of March 1 for the reporting of data should be changed to March 15 to give those carriers with dual reporting responsibilities additional time to submit data to the Board that is not reported on Form 477.

The Ratepayer Advocate endorses the Board Staff's implementation of reporting requirements for ILECs, CLECs, and DLECs because the data supplied by these carriers will enable the Board to determine whether the pro-competitive policies and local competition initiatives that have been put in place are actually spurring competition in New Jersey or if additional measures are necessary. These reporting requirements will also benefit New Jersey ratepayers because the data compiled by the Board will provide ratepayers with useful information such as what carriers serve a particular area, the range of services offered by carriers, promotional offerings, and rate and service charges of different carriers. Most importantly, this information will enable New Jersey consumers to make educated choices regarding their providers of voice and data services. The Board staff has scheduled an initial meeting during the first week of January, 2003, to commence a collaborative on this matter.

BOARD APPROVES PERFORMANCE MEASUREMENTS AND ESTABLISHES PENALTIES FOR SERVICE PROVIDED BY VERIZON TO CLECs, BPU Docket No. TX98010010

On May 25, 2000, the Board announced its approval of performance measurements metrics for service rendered by Verizon NJ to CLECs. The Board indicated that the metrics include measurements approved by both New York and Pennsylvania and will help measure the level of service that Verizon NJ provides to CLECs. The measurements were negotiated in discussions between the parties conducted by the Board's Technical Solutions Facilitation Team ("TSFT") on the implementation of carrier to carrier performance standards,

measurements and penalties. The TSFT reviewed performance measurements which Bell Atlantic has used in both New York and Pennsylvania and parties provided comments on which measures should be implemented in New Jersey.

In August 2000, Verizon NJ submitted to the Board an Incentive Plan for the State of New Jersey. The Board issued its comments on the Verizon NJ plan in early October 2000, and the Ratepayer Advocate submitted its comments on the Board recommendations later that month. Specifically, the Ratepayer Advocate offered recommendations regarding, inter alia, penalty levels, the consideration of CLEC recommendations, standards related to the inability of CLECs to receive data, and annual audits.

On October 12, 2001, the Board did establish penalties as part of the financial incentive plan to ensure that Verizon NJ provides quality services to CLECs. Most importantly, the Board set no limits for Verizon NJ's possible exposure to penalties which serve as a meaningful deterrent against providing discriminatory service to CLECs. According to the Board, penalties will be calculated on a "per unit" or "per measure" basis which will increase as the degree by which the performance standard is missed increases. The Board's Incentive Plan went into effect on November 1, 2001 and the Order issued on January 10, 2002.

In March, 2002, the Board issued its Telecommunications Order Approving Modifications to the Revised Guidelines and the Incentive Plan. The March Order imposed a procedure for ensuring the completeness and accuracy of the performance reports, a requirement that refileing of reports in order to correct deficiencies and inaccuracies be done in a timely manner, and increased the remedies by factors of two and three times for failure to correct and refile reports in specified periods of time.

On September, 27 2002, the Board sent a letter to Verizon NJ advising it that the Board intends to impose substantial remedies, monetary payments, from Verizon NJ for its failure to file corrected reports. On September 27, 2002, Verizon NJ filed an appeal at the Appellate Division with a request for a stay.

Recognizing the great significance the outcome of these proceedings will have on the future of competition in New Jersey's telecommunications marketplace, the Ratepayer Advocate supports the Board decision to take action in each of these areas to create policies which remove disincentives for competitive carriers to enter the market, while ensuring that all parties follow the rules of local competition. The Ratepayer Advocate's goals on behalf of New Jersey ratepayers continue to be to remove barriers and create a competitive environment that brings advanced technologies and consumer choice for all local exchange customers in 2003. The Ratepayer Advocate intends to vigorously participate in the Verizon NJ appeal, and will support the decisions of the Board, to insure that Verizon NJ acts in accordance with its responsibilities under law.

THE RATEPAYER ADVOCATE'S CHALLENGE OF VERIZON NEW JERSEY'S PETITION TO THE BOARD AND THE FCC TO PROVIDE LONG DISTANCE SERVICE IN NEW JERSEY, BPU DOCKET NO. TO01090541 AND FCC DOCKET NO. WC 02-67

On September 5, 2001, Verizon NJ notified the state Board of Public Utilities (“Board”) that it intended to ask the Federal Communications Commission for approval to provide long distance service under Section 271 of the Telecommunications Act of 1996 (“Act”). Verizon NJ asked the Board to act within 90 days on its request, as the company intended to file an application in December with the FCC.

Under the Act, the Baby Bell local operating telephone companies such as Verizon NJ are barred from providing long-distance service until the FCC determines that competition exists in their local markets. Section 271 of the Act sets forth a 14-item Competitive Checklist to be met before a local operating company can win approval to provide long-distance service. In addition, incumbent carriers such as Verizon must provide evidence that they have met certain public policy guidelines to ensure that the local exchange market is irreversibly open to competition and that adequate backsliding measures are in place. The FCC has 90 days to review the application once the company makes it filing. Under the Act, the FCC must consult with the Board as the state regulatory agency, to consider its determination as to whether Verizon has met all necessary requirements under the Act before the petition can be approved. The FCC relies upon state regulatory commissions such as the Board to fully review all the evidence provided by the company, its competitors and other parties to verify that the local market is irreversibly open to competition in preparing its consultative report. Only the FCC can grant final permission for long-distance entry by Verizon on a state-by-state basis. Verizon contended that the local phone market in New Jersey is irreversibly open to competition and the company has met the 14-point competitive checklist specified in the Act.

The Ratepayer Advocate contested Verizon’s petition and argued that Verizon’s request be denied because competition does not exist in the state’s local telephone market, and granting Verizon’s application would not be in the public interest. The Ratepayer Advocate asserted that Verizon’s 271 application was premature because Verizon presently has over 99% of local residential telephone customers in New Jersey.

Furthermore, the Ratepayer Advocate contended that outstanding issues regarding UNE rates and OSS testing prevented Verizon from satisfying at least one of the 14 item Competitive Checklist items. For example, checklist item two requires that Verizon provide competitors with nondiscriminatory access to network elements, which includes the provision of functioning OSS systems. At the time of Verizon’s filing, the Board had not yet issued a final determination on Verizon’s Unbundled Network Elements (“UNE”) rates (the price Verizon can charge competitive telecommunications companies for access to its lines to offer consumers local phone service), and the then effective UNEs rate, set by the Board in 1997 were the subject of a remand proceeding after they were determined to have been decided by the Board in an arbitrary and capricious manner. (See discussion above) The Ratepayer Advocate held that the lack of final UNE rates constituted a significant barrier to entry. Additionally, the 271 criteria that deals with the testing of the OSS, which governs the interconnection between competitive telephone companies and Verizon’s local network to provide local service over the telephone line to the customer’s residence or business also had not been met. Verizon’s conclusion that this checklist item was satisfied is based solely on the results of KPMG’s OSS test, which the Ratepayer Advocate argued is insufficient because it does not represent real world data. The Ratepayer Advocate submitted that for Verizon to

prove that it offers non-discriminatory access to its OSS systems, the Board must allow sufficient time for testing of Verizon's OSS using actual CLEC transaction data and real world volumes. According to the Ratepayer Advocate, it is in the public interest for both critical issues, UNE rates and OSS to be satisfactorily resolved prior to granting Section 271 approval.

On December 20, 2001, Verizon filed its petition with the FCC although the Board had not yet concluded its review of either the Section 271 application or the UNE proceeding. On January 14, 2002, the Board recommended that the FCC grant Verizon's application. It also issued a final order on UNE pricing on March 6, 2002.

The Ratepayer Advocate pursued its positions before the FCC and the United States Department of Justice ("USDOJ") in connection with their required reviews of the petition. The USDOJ forwarded its approval of the matter to the FCC but provided cautious comments supporting arguments filed by several CLECs that certain UNE rates, especially the "hot cut" rates, were too high. Prior to FCC action, Verizon withdrew its petition on March 19, 2002.

Verizon refiled its petition on March 26, 2002, with adjusted "hot cut" UNE rates. The FCC approved Verizon's petition on June 24, 2002. MetTel, a CLEC, has filed a notice of appeal in the D.C. Court of Appeals, which the Ratepayer Advocate is monitoring.

THE RATEPAYER ADVOCATE SUPPORTS AGGRESSIVE STATE ACTION TO LIMIT THE NEED FOR NEW AREA CODES, BPU DOCKET NOS. TO99010034, TO98080707 and TX01050313

In August of 1998 and January of 1999, Lockheed Martin IMS, the neutral third party area code administrator filed petitions with the Board for relief in the 201/973 and 732/908 area codes, respectively. The 201, 973, 908 and 732 area codes were predicted to be exhausted at various times in the years 2000 and 2001.

In December of 2000 New Jersey was assigned its sixth area code, 856, as a result of the Board's decision to implement a geographic split in the southern region of the State, currently served solely by the 609 area code.

The Ratepayer Advocate maintains that the need for additional area codes is the result of inefficient number use and administration, rather than the increased need of telephone numbers for fax machines, pagers, cell phones, and modems. Generally, the Federal Communications Commission ("FCC") limits the authority of state regulatory commissions to implement innovative number conservation procedures. However, the FCC may permit implementation of such innovative procedures if a state regulatory commission presents the procedure to the FCC and seeks authority for implementation, which the Board has requested.

The Ratepayer Advocate has urged the Board, over the past several years, to petition the FCC to implement innovative number conservation policies throughout the State, in order to reduce the need for additional area codes. Such innovative procedures could include distribution of smaller blocks of numbers than presently required to a telecommunications carrier, requiring more efficient use of a carrier's assigned telephone numbers and the return of unused numbers (number pooling). Additionally, the Ratepayer Advocate asked the Board to consider rate center consolidation, which may be ordered by the Board without FCC approval and would greatly decrease the number of telephone numbers a carrier must request to serve customers. On June 14, 2000 the Board filed its petition with the FCC for leave to implement number conservation strategies in New Jersey. On October 25, 2000 the Board approved the area code relief proposal of NeuStar, the administrator of the North American Numbering Plan, which would impose an all services overlay of a new area code over the 609 and 856 Numbering Plan Areas ("NPA").

On February 14, 2001, the FCC released an Order addressing the Board's petition for delegated authority to implement numbering resource optimization measures and other state's petitions. The FCC granted the Board the authority to implement a thousands-block number pooling trial in the 201 NPA. The FCC also conditionally granted pooling authority following area code relief in the 732 and 973 NPAs in addition to granting the Board the authority to use rationing procedures for six months following implementation of area code relief. By Order dated March 19, 2001, the Board found that area code relief was necessary in the 201, 732 and 973 NPAs in Northern New Jersey and directed that overlays be implemented in those area codes. By Order dated June 6, 2001, the Board in Docket No. TX01050313 reaffirmed its appointment of NeuStar as the interim administrator of thousands-

block pooling trials in New Jersey, and affirmed the schedule agreed to by the industry and Staff for implementation of pooling by all Local Number Portability (“LNP”)-capable carriers in all LNP-capable rate centers in New Jersey’s 201 NPA by July 31, 2001, in the 973 NPA by January 16, 2002, and in the 732 NPA by February 15, 2002. The Board further directed that Thousands-block number pooling in all overlay area codes shall be implemented as soon as the relief code becomes available with a pool start date of December 2, 2001. The Ratepayer Advocate will continue to support the Board’s implementation of conservation measures.

C. RATEPAYER ADVOCATE INVOLVEMENT IN TELECOMMUNICATIONS PROCEEDINGS BEFORE THE FEDERAL COMMUNICATIONS COMMISSION (FCC)

RATEPAYER ADVOCATE URGES FCC TO EXTEND THE ANTI-COMPETITIVE SAFEGUARDS OF THE FEDERAL TELECOMMUNICATIONS ACT AND THEREFORE AVOID AUTOMATIC SUNSET OF THOSE PROTECTIVE FEATURES, FCC Docket No. WC 02-112

In August, 2002, the Ratepayer Advocate filed comments with the FCC in response to a notice for comments on whether the anti-competitive safeguards of the Federal Telecommunications Act of 1996 (“Act”), applicable to telecommunications carriers authorized to provide intra-LATA long distance services (Section 271 authority), should sunset automatically upon the expiration of three years since the grant of approval. The Ratepayer Advocate submitted specific recommendations that the requirements of Section 272 should not sunset automatically, and that a multi-factor analysis be conducted in order to determine whether the nature of the marketplace in a given jurisdiction three years after long distance authority is granted permits the lifting of anti-competitive protections as no longer necessary.

The ultimate objective of the Act was to deliver to the marketplace full and open competition in both the local exchange and long distance markets. The Act contemplated that once the Federal Communications Commission (“FCC”) determined that a Bell Operating Company (“BOC”) had opened its local exchange market to competition in that jurisdiction, it would then be allowed to offer interstate long distance services. That grant of authority, however, would not be without restriction. Indeed, Section 272 of the Act prescribes parameters for fair dealing between the BOC affiliates so as to minimize the BOC’s ability to exercise its acknowledged force in the market – despite the award of Section 271 authority – to the detriment of the market and the competitive local exchange carriers (“CLECs”) seeking to compete. Those market parameters could sunset three years after the grant of Section 271 authority unless extended by the FCC. The Ratepayer Advocate responded to the FCC’s notice for comments on what should happen next, especially in view of the forthcoming first application of the sunset provision in New York on December 23, 2002.

The Ratepayer Advocate submitted that the structural separation requirements should not sunset automatically. Instead, in order for the FCC to determine whether the Section 272 requirements should sunset in a particular jurisdiction, it should undertake a multifactor analysis on an application filed by the BOC. That analysis would assess the market power

of a BOC and if the BOC is shown to lack market power, the requirements of Section 272(b) could sunset. In the comments filed in August, 2002, the Ratepayer Advocate recommended the publication of proposed rules for further comment that establish these criteria and procedures for examination of the BOC's application.

In the event that a BOC establishes it no longer has market power in a particular state, the Ratepayer Advocate further submitted that non-structural safeguards should remain to monitor and help prevent backsliding behavior by the BOC. The FCC had previously established, and then lifted structural requirements, based on changed market conditions, in another setting, substituting them with non-structural safeguards. The Ratepayer Advocate specifically proposed the implementation of quarterly reporting requirements coupled with penalties to ensure that once sunset occurs, the BOC would not discriminate in providing services to non-affiliated carriers, and would not engage in cost misallocation. Furthermore, the Ratepayer Advocate recommended an annual audit. The current biennial audit is insufficient to serve as a monitoring device because it does not adequately protect or discourage anti-competitive conduct, it is too infrequent, and only provides historic information.

In the event of sunset, the Ratepayer Advocate also recommended adoption of accounting safeguards similar to those adopted in a previous matter. Since the FCC could reduce non-structural safeguards as competitive market conditions improve or when there is evidence of the competitive local market the Act was designed to create. Fair competition, as contemplated by the legislation, is a work in progress that requires periodic review to assess its forward development.

The Ratepayer Advocate continues to monitor this matter. On December 23, 2002, the FCC issued a Memorandum Opinion and Order in respect to the application of the sunset provision in New York State, three years after the grant of interstate long distance authority to Verizon New York. The Order permitted the pertinent safeguards to sunset in New York, but did not elaborate on its process or its deliberations. However, the Commission validated the Ratepayer Advocate's position that the determination of whether to sunset is a state-by-state consideration. Additionally, the FCC commented that it is firmly committed to ensuring compliance with the nondiscrimination requirements that remain in effect despite the sunset of other provisions, and that it would be issuing a Notice of Proposed Rulemaking (NPRM) to seek comment on whether there is continued need for dominant carrier regulation for Bell Operating Company long distance services provided outside of a separate affiliate.

RATEPAYER ADVOCATE SEEKS EXPEDITED DECLARATORY RULING FROM FCC REGARDING CALCULATION OF DISCOUNTS FOR SCHOOLS AND LIBRARIES UNDER E-RATE PROGRAM, FCC Docket No. 96-45

In May 1998 the Ratepayer Advocate filed a petition with the FCC seeking an expedited declaratory ruling that 1) certain discounted rates for services provided by Verizon NJ") to schools and libraries under its Access New Jersey program are not a "special regulatory subsidy," pursuant to the FCC's Fourth Order on Reconsideration in CC Docket No.

96-45, FCC 97-420, Rel. Dec. 30, 1997) (hereinafter "Fourth Order"), and that such rates constitute the "lowest corresponding price" ("LCP") for purposes of calculating Verizon NJ's reimbursement from the federal universal service fund; 2) the discounted rates offered by Verizon NJ to schools and libraries under its Access New Jersey program do not preclude schools and libraries of this State from also obtaining benefits from the Federal Universal Service Fund; and 3) Verizon NJ's plan to seek reimbursement from the federal universal service fund for the difference between discounted rates and tariff rates for services supplied to schools and libraries is contradictory to the FCC's ruling in its Fourth Order.

The Ratepayer Advocate's Petition was filed in response to Verizon NJ's unilateral decision to refuse to provide the Access New Jersey rates to schools and libraries which sought discounts from the Federal Universal Service Fund. This decision has caused great confusion among many of the eligible schools and libraries because Verizon NJ, through its policies, has forced them to make the difficult decision of choosing between the Access New Jersey discounts and the Universal Service discounts. Considering the importance of this issue to New Jersey's schools and libraries, and recognizing the need to promptly resolve this matter so that eligible schools and libraries will not be denied benefits that both programs were intended to provide them, the Ratepayer Advocate has requested the FCC to address this issue on an accelerated basis. The FCC had taken no action in this matter.

The Ratepayer Advocate notes that during the evidentiary proceedings in the Verizon's PAR-2 application in 2001 (see discussion above), it continued to advocate for Verizon NJ to permit schools and libraries to obtain discounts under both the Verizon Access New Jersey Plan, as well as the Federal Universal Service Fund. In keeping with the Board in its oral decision of the PAR-2 matter, Verizon has agreed and schools and libraries in New Jersey will be able to enjoy the benefits of both the Federal Universal Service Fund and the Access New Jersey discounts in 2003.

OTHER SELECTED REGULATORY ACTIONS OF THE FEDERAL COMMUNICATIONS COMMISSION (FCC) AFFECTING THE NEW JERSEY TELECOMMUNICATIONS MARKET - 2002

The FCC is responsible for implementing the various provisions of the Telecommunications Act of 1996 ("Federal Act") as well as other important national telecommunications policies. Therefore, actions taken by the FCC dramatically affect the telecommunications marketplace, including the introduction of competition, rates, and access to new and advanced telecommunications services. Before implementing a rule, the FCC provides information to the public on the issues it intends to address in a particular rule it wants to adopt and provides a comment period for interested parties. When the Ratepayer Advocate determines that proposed FCC action will affect New Jersey's telecommunications or cable television marketplace, it submits comments to the FCC on behalf of New Jersey's ratepayers and monitors the proceeding.

Listed below are some of the more significant regulatory actions taken by the FCC. These proceedings affect many issues of importance to telecommunications policy makers in New Jersey, the Board, and the ratepayers of New Jersey.

INTERCARRIER COMPENSATION FOR INTERNET SERVICE PROVIDERS

On February 25, 1999, the FCC determined that calls to Internet Service Providers ("ISPs"), [an ISP is a company like America Online ("AOL")], are largely interstate, even if the call the consumer places to connect with its ISP is a local call, because after consumers dial into their Internet provider, they generally visit websites and servers located outside the local calling area. The FCC's decision is significant because an interstate service is not subject to reciprocal compensation, while a local call is.

The issue of intercarrier compensation for traffic sent to an ISP is still not resolved as of January, 2003, due to the FCC's inability to articulate a basis for its decision which can pass judicial scrutiny. In 2000, the United States Court of Appeals for the District of Columbia ("D.C. Circuit") faulted the FCC on its failure to adequately explain the basis for its decision and remanded the matter to the FCC.

In 2001, the FCC issued another order (called the Reciprocal Compensation Remand Order) which attempted to address the concerns raised by the Court. In the Reciprocal Compensation Remand Order, the FCC adopted a "bill and keep solution" to ISP compensation. Bill and keep requires each carrier to recover its costs from its own customer in lieu of carriers paying each other reciprocal compensation. In order to smooth the transition to bill and keep, the FCC adopted several interim cost-recovery rules which permitted the continued payment of reciprocal compensation for ISP traffic at lower rates and subject to certain caps. In addition, the FCC ordered that state commissions would no longer have jurisdiction over ISP-bound traffic under interconnection agreements. This order was appealed to the D.C. Circuit by several carriers.

In conjunction with the Reciprocal Compensation Remand Order, the FCC issued a Notice of Proposed Rulemaking ("NPRM") (Docket No. 01-92) in April 2001 called the Unified Intercarrier Compensation NPRM. The FCC proposed to implement bill and keep for all telecommunications traffic, not merely ISP bound traffic. The FCC received 220 comments in this proceeding, but no decision has been issued as of January, 2003.

In May 2002, the D.C. Circuit again found the reasons advanced by the FCC to be deficient and remanded the matter back to the FCC. Pending further decision by the FCC in 2003, the challenged Reciprocal Compensation Remand Order rules remain in effect.

TELRIC, UNBUNDLING AND COLLOCATION

In implementing the 1996 Act, the FCC choose to spur new entry by adopting pricing rules to govern the leasing of piece-parts of the incumbent's networks, i.e, unbundled network elements or UNEs and the resale of Incumbent Local Exchange Carriers ("ILEC") services.

The FCC's new pricing rules are based upon a methodology identified as total element long run incremental cost ("TELRIC"). Under TELRIC, prices of UNEs are determined on the basis of only the incremental forward-looking cost of an hypothetical, ideally efficient, state-of-the-art network. TELRIC does not permit the consideration of costs that ILECs incurred in constructing their networks. It prohibits consideration of even the actual incremental or forward-looking costs that an ILEC may incur; the only costs that count are those of the hypothetical, perfectly efficient, network.

Many states and ILECs challenged those rules in the Eighth Circuit on the basis that the FCC lacked the jurisdiction to adopt the TELRIC pricing rules. The states and CLECs were successful on their jurisdictional challenge but the merits of the rules were not addressed. The case was appealed to the Supreme Court. In 1999, the Supreme Court held that the 1996 Act provided the FCC with sufficient authority to promulgate the TELRIC pricing rules and remanded the matter to the Eighth Circuit to address the merits of the pricing rules. In 2000, the Eighth Circuit invalidated the FCC TELRIC pricing methodology and set aside the FCC rules requiring ILECs to combine previously uncombined network elements. As a result, state commissions, ILECs and CLECs remained in limbo as to the appropriate pricing structure to apply to UNEs that CLECs lease from the ILECs under existing and future interconnection agreements. Various parties again appealed to the Supreme Court.

On May 13, 2002, the Supreme Court upheld the FCC TELRIC pricing methodology and rules requiring incumbents to combine network elements. The Supreme Court concluded that new entrants under the Act are entitled to lease elements of the local telephone network from the ILECs and that the FCC can require state commissions to set the rates charged by the incumbents for the leased elements on the forward-looking basis untied to the incumbent's investment (the TELRIC pricing methodology) and can require incumbents to combine such elements at the CLEC's request when they lease them to CLECs.

This decision by the Supreme Court permits all participants to move forward to implement the promise of the 1996 Act: more competition, lower prices and technological innovations.

Additional Unbundling to Enhance Competition

In November, 1999, the FCC issued its UNE Remand Order in response to the 1999 decision by Supreme Court discussed above. The Ratepayer Advocate filed comments in the remand proceeding urging the FCC to continue to foster competition. The UNE Remand Order reaffirmed the original list of UNEs that must be made available to competitors with the exception of Operator Services and Directory Services and imposed additional unbundling requirements. The FCC concluded that modification and periodic review of the National List was warranted because the FCC recognized that rapid changes in technology, competition, and the economic conditions of the telecommunications market will require a reevaluation of the national unbundling rules periodically. In order to encourage a reasonable period of certainty in the market, the FCC announced that it would reexamine the national list of unbundled network elements in three years (2002). The FCC reaffirmed that (1) Section

251(d)(3) permits state commissions to require incumbent LECs to unbundle additional elements as long as the obligations are consistent with the requirements of section 251 and the national policy framework instituted in this Order and (2) removal of elements from the national list on a state-by-state basis would not be consistent with section 251 and the goals of the Act.

The FCC directed that the following UNEs be unbundled:

- **LOOPS.** Incumbent local exchange carriers (“LECs”) must offer unbundled access to loops, including high-capacity lines, xDSL-capable loops, dark fiber, and inside wire owned by the incumbent LEC. The unbundling of the high frequency portion of the loop is being considered in another proceeding.
- **SUBLOOPS.** Incumbent LECs must offer unbundled access to subloops, or portions of the loop, at any accessible point. Such points include, for example, a pole or pedestal, the network interface device, the minimum point of entry to the customer premises, and the feeder distribution interface located in, for example, a utility room, a remote terminal, or a controlled environment vault. The Order establishes a rebuttable presumption that incumbent LECs must offer unbundled access to subloops at any accessible terminal in their outside loop plant.
- **RECONFIGURATION OF NETWORKS.** Parties are encouraged to cooperate in any reconfiguration of the network necessary to create one. If parties are unable to negotiate a reconfigured single point of interconnection at multi-unit premises, the incumbent is required to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers.
- **NETWORK INTERFACE DEVICE (“NID”).** Incumbent LECs must offer unbundled access to NIDs. The NID includes any potential means of interconnection with customer premises inside wiring at the point where the carrier’s local loop facilities end, such as at a cross connect device used to connect the loop to customer-controlled inside wiring. This includes all features, functions, and capabilities of the facilities used to connect the loop to premises wiring, regardless of the specific mechanical design.
- **CIRCUIT SWITCHING.** Incumbent LECs must offer unbundled access to local circuit switching, except for local circuit switching used to serve end users with four or more lines in access density zone 1 in the top 50 Metropolitan Statistical Areas (“MSAs”), provided that the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link throughout zone 1. (An enhanced extended link (“EEL”) consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. The EEL allows new entrants to serve customers without having to collocate in every central office in the incumbent’s territory.) Local circuit switching includes the

basic function of connecting lines and trunks on the line-side and port-side of the switch. The definition of the local switching element encompasses all of the features, functionalities, and capabilities of the switch.

- **PACKET SWITCHING.** Incumbent LECs must offer unbundled access to packet switching only in limited circumstances in which the incumbent has placed digital loop carrier systems in the feeder section of the loop or has its Digital Subscriber Line Access Multiplexer (“DSLAM”) in a remote terminal. The incumbent will be relieved of this obligation, however, if it permits a requesting carrier to collocate its DSLAM in the incumbent’s remote terminal on the same terms and conditions that apply to its own DSLAM. Packet switching is defined as the function of routing individual data message units based on address or other routing information contained in the data units, including the necessary electronics (e.g., DSLAMs).
- **INTEROFFICE TRANSMISSION FACILITIES.** Incumbent LECs must offer unbundled access to dedicated interoffice transmission facilities, or transport, including dark fiber. Dedicated interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by the incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers. State commissions are free to establish reasonable limits governing access to dark fiber if incumbent LECs can show that they need to maintain fiber reserves.
- **INCUMBENT LECs must also offer unbundled access to shared transport** where unbundled local circuit switching is provided. Shared transport is defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches in the incumbent LEC’s network.
- **SIGNALING AND CALL-RELATED DATABASES.** Incumbent LECs must offer unbundled access to signaling links and signaling transfer points (“STPs”) in conjunction with unbundled switching, and on a stand-alone basis. The signaling network element includes, but is not limited to, signaling links and STPs. Incumbent LECs must also offer unbundled access to call-related databases, including, but not limited to, the Line Information database (“LIDB”), Toll Free Calling database, Number Portability database, Calling Name (“CNAM”) database, Operator Services/Directory Assistance databases, Advanced Intelligent Network (“AIN”) databases, and the AIN platform and architecture. We do not require incumbent LECs to unbundle access to certain AIN software that qualify for proprietary treatment.

- **OPERATIONS SUPPORT SYSTEMS (“OSS”).** Incumbent LECs must offer unbundled access to their operations support systems. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC’s databases and information. The OSS element includes access to all loop qualification information contained in any of the incumbent LEC’s databases or other records, including information on whether a particular loop is capable of providing advanced services.
- **BROADBAND SERVICES.** Contemporaneously with the FCC’s release of the UNE Remand Order, the FCC issued its Line Sharing Order which announced that the high frequency spectrum of the local loop must also be unbundled. The high frequency portion of the loop is used to provide generic digital subscriber line services (“xDSL”) that allows users to access the Internet and transmit data at high speeds using telephone lines. This is commonly referred to as BROADBAND SERVICES.

The FCC found the Line Sharing Order would foster competition for consumers because (1) consumers will not have to buy a 2nd telephone line to have access to a competitive carrier's high-speed Internet access; (2) consumers will not have to change their phone number to get access to a competitive carrier's high-speed Internet access service; and (3) Line sharing will facilitate further investment by competitive data providers and encourage these providers to deploy advanced services in areas where, heretofore, it has not been economically viable to do so.

In order to achieve these results, the FCC concluded that (1) ILECs must provide unbundled access to the high frequency portion of the loop to any carrier that seeks to deploy any version of xDSL that is presumed to be acceptable for shared line deployment in accordance with the rules adopted in the Order; (2) ILECs must share the line with only one requesting carrier; and (3) ILECs are not required to unbundle the lower frequency portion of the loop (voiceband).

In January 2000, various parties filed appeals to the D.C. Circuit on the UNE Remand Order and the Line Sharing Order. At the request of the FCC, the D.C. Circuit agreed to hold these appeals in abeyance pending the FCC’s consideration of pending petitions for reconsideration in both proceedings. In January, 2001, the FCC issued an order (Line Sharing Order Reconsideration) addressing five petitions for reconsideration filed in response to the Line Sharing Order.

In its Line Sharing Order Reconsideration, the FCC: (1) clarified that line sharing applies to the entire loop, even where the ILEC has deployed fiber in the loop; (2) granted AT&T and WorldCom’s request for clarification that ILECs must permit competitors providing voice service using the UNE-platform to self-provision or partner with a data carrier in order to provide voice and data on the same line; (3) denied Bell Atlantic’s request for clarification that data carriers participating in line sharing arrangements are not required to have access to the loop’s entire frequency range for testing purposes; (4) granted a joint petition by the National Telephone Cooperative Association and the National Rural Telephone Association

for clarification regarding line sharing obligations of rural ILECs; and (5) rejected Bell Atlantic's contention that the industry is permitted to adopt a line sharing deployment schedule other than the one developed in the Line Sharing Order.

In addition, the FCC took several actions concerning spectrum management,⁸ including: (1) denying BellSouth's request that the FCC reconsider its finding that new technologies are presumed deployable anywhere when successfully deployed in one state without significantly degrading the performance of other services; and (2) denying Bell Atlantic's request to reconsider the FCC's conclusion that state commissions are in the best position to determine the disposition of known disturbers in the network. Lastly, the FCC requested comment on line sharing where an ILEC has deployed fiber in the loop.

On May 24, 2002, the D.C. Circuit issued a ruling on the appeals and remanded the UNE Remand Order to the FCC and remanded and set aside the Line Sharing Order including the rules implementing that order. Thereafter on May 30, 2002 the FCC issued a Public Notice extending the time to file reply comments in the Triennial Review Proceedings until July 17, 2002 (discussed in more detail below) so that interested parties would have an opportunity to comment on the D.C. Circuit opinion. Various CLECs had asked the FCC to seek a stay of the D.C. Circuit order pending issuance of the FCC order in the Triennial Review Proceeding. On July 8, 2002, the FCC filed a petition with the D.C. Circuit asking for a rehearing or a rehearing en banc. Several CLECs have filed an appeal of the Court of Appeals' decision to the Supreme Court. The final resolution in these cases will have a significant impact on consumers and the extent of competition in the market place.

COLLOCATION - Collocation means the installation of communications equipment at the network site of another carrier.

In 1999, the FCC announced new national rules to implement Congress' goals for advanced telecommunication services in the wireline telephone market. Section 706 of the Federal Act requires that the FCC and state commissions encourage the deployment of advanced telecommunications services to all Americans including elementary and secondary schools and classrooms. Advanced telecommunications services include high speed, switched, and broadband telecommunications that permit high-quality voice, data, graphics, and video telecommunications over the same line and at the same time. To facilitate rapid deployment of advanced services, the FCC expanded and clarified the collocation obligations of local telephone companies, also known as Local Exchange Carriers ("LECs"), by setting minimum national standards.

Therefore, in New Jersey, ILECs such as Verizon New Jersey, Inc. must meet the following minimum conditions and/or provide the following services:⁹

⁸"Spectrum management" refers to the administration of the technology, technical standards and other means of transmission of voice and data over a telecommunications network.

⁹State commissions may also adopt additional requirements.

- Must permit shared cage and cageless collocation for competitors in the same building or in adjacent buildings if collocation space is not available.
- Must provide reasonable security measures to protect their central office equipment.
- May not require CLEC equipment to meet more stringent safety requirements than those the incumbent LECs imposes on its own equipment.
- Must permit collocation of “switching” or enhanced services function.
- Must permit access to the entire central office if it denies space to a CLEC and provide a list of central offices in which there is no more space. All obsolete and unused equipment must be removed to facilitate additional collocation space within central offices.

The FCC also concluded that the collocation method used by one incumbent LEC or mandated by a state commission is presumptively technically feasible for any other LEC and that uniform spectrum management procedures are essential to the success of advanced services deployment. These rules were challenged in the D.C. Circuit and in 2000, the D.C. Circuit affirmed in part and reversed in part the FCC ruling. The D.C. Circuit agreed that the FCC’s definition of necessary “goes to far.” The D.C. Circuit found that (1) the FCC’s interpretation of necessary to be “impermissibly broad,” (2) the FCC’s rule authorizes CLECs to perform cross-connections had no basis in the statute, and (3) the FCC’s space assignment rules were defective. In response to the court’s ruling, in August 2000, the FCC issued a Further Notice of Proposed Rulemaking to address the collocation issues remanded by the D.C. Circuit.

On July 12, 2001, the FCC issued its Collocation Remand Order which announced revised rules intended to promote the development and deployment of new technologies and services on a more efficient and expeditious basis. According to the FCC, the new rules are designed to balance the interest of all parties ensuring that competitive carriers have interconnection to incumbents carriers and nondiscriminatory access to UNEs while protecting ILEC property rights.

In the 2001 Collocation Remand Order, the FCC concluded that (1) collocating equipment is “necessary for interconnection or access to UNEs” if an inability to deploy equipment would, as a practical, economic or operational matter, preclude the CLEC from obtaining interconnection or access to UNEs; (2) multifunction equipment is “necessary” only if the primary purpose and function of the equipment, as the CLEC seeks to deploy it, is to provide the requesting carrier with “equal in quality” interconnection or “nondiscriminatory access” to one or more UNEs; (3) any function that would not meet its equipment standard as a stand-alone function must not cause the equipment to significantly increase the burden on the ILEC’s property; (5) switching and routing equipment typically meets its equipment standard because an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude a requesting carrier from obtaining nondiscriminatory access to

an UNE, the local loop; (6) eliminating the requirement that an incumbent carrier allow competitive carriers to construct and maintain cross-connects outside of their collocation space was appropriate with the caveat that the ILEC must provide cross-connects upon request; and (7) eliminating various physical collocation requirements, such as the requirement that gave requesting carriers the option of picking their physical collocation space from among the unused space in an incumbent's premises. Various ILECs including Verizon appealed the Collocation Remand Order in 2001.

On June 18, 2002, the D.C. Circuit denied all appeals and upheld the new rules as being consistent with the 1996 Act.

ACCESS CHARGE REFORM

In 1999, the D.C. Circuit overturned the FCC's formula for reducing access charges by the application of an X-factor. The FCC had required large ILECs to reduce their interstate access charges each year by the X-factor set by the FCC. In the FCC's Fourth Report Order in its Price Cap Performance Review for Local Exchange Carriers proceeding, the FCC set the X-factor at 6.5%. The D.C. Court held that the FCC failed to give a reasoned decision for this action and remanded the matter to the FCC.

On May 31, 2000, the FCC responded to the remand with a new plan for reducing access charges which was sponsored by the Coalition for Affordable Local and Long Distance Service. The coalition is a group of local and long distance carriers that offered a plan to restructure access charges for the next five years ("CALLS"). The CALLS plan was a compromise between adverse industry segments, local exchange carriers and long distance companies. The Ratepayer Advocate filed comments opposing the plan since the immediate impact of the plan would be increased fixed charges to ratepayers in terms of higher subscriber line charges. The CALLS plan includes three major components. Direct end-user access charges are increased while access charges to long-distance carriers are reduced. Effective July 1, 2000, switched access charges were to be reduced \$2.1 billion and the residential PICC was to be eliminated, while the flat rate SLC for primary residential and single-line business lines was allowed to increase to as much \$6.50 per line. With these adjustment overall LEC revenues were to be reduced \$700 million compared to the FCC's prior access charge program. By the end of the five-year plan, LEC revenues were expected to be higher under the FCC's prior plan.

The two participating long-distance companies, AT&T and Sprint are required to offer plans with no minimum monthly charge and to flowthrough reduction in access charges to their customers in form of lower prices.

Finally, the plan establishes a new \$650 million universal service fund to support interstate access rates. This fund would be combined with the existing universal service funds and programs, and like other federally administered universal service funds, all telecommunications carriers would pay into this fund based upon their interstate revenues. Under the CALLS plan, the FCC agreed to conduct a cost study before the SLC cap was increased above \$5.00.

Various parties appealed the CALLS order and these appeals were heard in the Fifth Circuit. The Fifth Circuit upheld most of the CALLS plan but found that the FCC failed to adequately explain its setting of the \$650 million new universal service fund and remanded that issue to the FCC. As of January, 2003, the FCC has not yet issued an order on this matter.

In September 2001, the FCC initiated its cost review proceeding relating to the planned increases in the SLC. On June 5, 2002, the FCC issued an Order approving the proposed increases to be effective on July 1, 2002 and July 1, 2003. The SLC increased to \$6.00 on July 1, 2002 and will increase to \$6.50 on July 1, 2003. The SLC is paid directly by customers on their phone bills. Commissioner Copps filed a dissent in the proceeding. He argued that the FCC should have conducted its own independent analysis of the cost data in order to fulfill its obligations to consumers.

VERIZON NJ'S AUTHORIZATION FOR IN-REGION LONG DISTANCE IN NEW JERSEY

As discussed in more detail above, the FCC granted Verizon NJ's application for in-region long distance authority in New Jersey on June 24, 2002. The FCC concluded that Verizon NJ met the 14 point checklist contained in Section 271 of the Act and that the grant of the application would be in the public interest. Verizon NJ filed its initial application in December 2001, but withdrew that application in March 2002 due to concerns expressed by the FCC, and other parties including the Ratepayer Advocate. The Ratepayer Advocate opposed the application as not being in the public interest because the New Jersey market is not sufficiently open to competition as evidenced by the low level of residential competition in the states and that substantive issues remained over certain of the UNE rates established by the Board in its Final UNE Order issued on March 6, 2002.

Verizon NJ refiled its application on March 26, 2002 after lowering certain UNE rates. Various parties, including the Ratepayer Advocate, continued to oppose the application for substantially the same reasons argued upon in the prior proceeding. In addition, new issues were raised about compliance with checklist item 2 including switching rates, non-recurring rates, and access to OSS. The Ratepayer Advocate will monitor the results of the FCC's grant of this application in support of the receipt by consumers of the benefits contemplated by the Act.

OTHER FCC PROCEEDINGS

In 2002, the FCC initiated a number of other proceedings which address major issues related to the implementation of the 1996 Act. A brief description of these proceedings follows:

- On February 15, 2002, the FCC released an NPRM in a proceeding entitled *I/M/O Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers;*

Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhanced Services: 1998 Biennial Regulatory Review- Review of Computer III and ONA Safeguards and Requirements (Docket No. 02-33). The FCC asked for comments on how broadband services should be regulated. The Ratepayer Advocate did not file comments but is monitoring the proceedings to ensure there will be no negative impact on New Jersey ratepayers. The FCC tentatively concluded that the offering of broadband Internet access services is an information services as opposed to a telecommunications service. As an information service, the FCC would regulate such services under Title 1 of the Act as opposed to Title 2 of the Act which covers telecommunications services. There are substantive difference between regulation under Title 1 and under Title 2. One of the major issues is whether the unbundling obligations for DSL service should be discontinued. 1,075 comments have been filed in this proceeding. CLECs and consumer groups argue that even if broadband Internet access services are information services, stand alone broadband transmission service is a telecommunications service which should remain subject to Title 2 regulation. In addition, the Computer II and III safeguards should remain in place due to the market power of the ILECs. Lastly, it is argued that regulatory parity does not require treating Internet access through DSL the same way as cable is regulated. ILECs for the most part support the initial conclusions and seek Title I regulation of DSL. This proceeding and the FCC's decisions are important to consumers to ensure that broadband remains available now and in the future.

- The FCC issued a NPRM on January 25, 2002 in the proceeding entitled *I/M/O Schools and Libraries Universal Service Support Mechanism*. 193 comments, including replies, were filed in response to the NPRM for the review of certain rules governing the schools and libraries universal support mechanism (FCC 02-6). The Ratepayer Advocate did not file comments, but monitored the proceeding to ensure there will be no negative impact on New Jersey ratepayers. On June 13, 2002, the FCC announced the adoption of an order in this proceeding. The FCC concluded that unused funds from the USF's schools and libraries program (E-Rate Program) will be applied to stabilize the amount of contributions to USF for no more than the next three quarters, ending March 2003. Following this period, unused funds will be distributed to the schools and libraries program, increasing the funds available for the program. The FCC asserted that the framework adopted for the treatment of unused for schools and libraries program will provide predictability and stability to the fund by making USF line item on phone bills constant in the near term, while the FCC considers reforming how monies to support USF are collected.
- 272 comments have been filed in FCC Docket No. 02-52 in response to the Declaratory Ruling and Notice of Proposed Rulemaking (FCC 02-77) issued on March 15, 2002. This proceeding involves the appropriate regulatory treatment for broadband access to the internet over cable facilities. The NPRM sought comments on the FCC's jurisdiction over cable modem service, and

whether market developments are sufficient to ensure consumers a choice of ISP without government intervention and mandating multiple access; on the consequence of the legal classification of cable modem service on rights-of-ways, franchise fees, pole attachments, universal service and protection of subscriber privacy. The Ratepayer Advocate filed comments in June, 2002, and filed reply comments in August, 2002. A decision by the FCC has not yet been issued as of January, 2003.

- 854 comments, including replies, were filed in response to the NPRM for the review of Section 251 unbundling obligations of ILECs. Consumer Advocates, state commissions, and CLECs generally oppose any change in the current unbundling requirements. ILECs support modification of the unbundling requirements. The Ratepayer Advocate did not file comments but is monitoring the proceedings to ensure there will be no negative impact on New Jersey ratepayers.
- 181 comments, including replies, were filed in response to the NPRM for the review of the regulatory treatment of ILECs broadband telecommunications services and whether they should be regulated as dominant or non-dominant. Consumer Advocates, state commissions, and CLECs generally oppose any change in the current regulatory treatment. ILECs support non-dominant regulation. The Ratepayer Advocate did not file comments but is monitoring the proceedings to ensure there will be no negative impact on New Jersey ratepayers.
- The FCC issued a Notice of Inquiry (“NOI”) on June 14, 2002 which announced its ninth annual inquiry (FCC 02-178) (Docket No. 02-145) into the status of competition in the market for delivery of video programming. The information gathered was included in the 2002 Competition Report released December 31, 2002. The NOI sought information that will allow the FCC to define the economic market for video programming, to evaluate the status of competition in the video marketplace; and to evaluate prospects for new entrants to that market. The NOI solicits information regarding the extent to which consumers have choices among video programming distributors and delivery technologies. In addition, the NOI asks for information that will allow it to compare video programming offerings, prices for programming services and associated equipment, and any other services offered by providers of video programming services such as programming in high definition format. The FCC continues to seek information regarding each of the video programming distributors, including the number of homes passed, the number of subscribers, the services offered, the cost for various service options, financial information on each industry, ownership information, and data on investments in plant and facility upgrades. The FCC also requested comment on industry and market structure and programming and technical issues.

Additionally, the FCC seeks information on the provision of high-speed Internet access services, telephony, video-on-demand, high definition television, and interactive television and on new ways of offering service (e.g., personal video recorders, streaming video). The FCC also seeks information on the extent to which programming distributors, both broadcast and non-broadcast programming services, are involved in the production of the programming they provide. In addition, the FCC seeks information regarding video programming providers' experiences with closed captioning and video descriptions. 22 comments were filed. The Ratepayer Advocate did not file comments but is monitoring the proceedings to ensure there will be no negative impact on New Jersey ratepayers.

- The FCC issued a NPRM on June 19, 2002 which announced a rulemaking to reflect the statutory sunset of the Cable Programming Service Tier ("CPST") rate regulations (FCC 02-177) (Docket No. 02-144). The Commission's rate regulations and rate forms were adopted when the rates for both the basic service tier ("BST") and the CPST were subject to regulation. Although the BST rates were subject to prior approval by local franchising authorities and CPST rates were subject to Commission review if a complaint was filed with the Commission, the Commission developed a common set of benchmarks and regulations for both BST and CPST rates. The 1996 Act ended regulation of CPST rates after March 31, 1999. For cable systems not subject to effective competition, BST rates remain subject to local review. This proceeding provides an opportunity to review and update the Commission's rate rules, generally, and to improve the process based on experience gained with the current rate regulations. The notice focuses on improvements within the existing regulatory scheme for both BST and associated equipment, but also seeks comment on broader changes. In its clarification, the Commission explained that it will review appeals of rate adjustments for adding, deleting, or substituting channels using its rules previously in effect for these changes. It also explained how it will review appeals regarding rate adjustments for channels moved to the BST before and after the sunset of the CPST. 22 comments including replies were filed. The Ratepayer Advocate filed comments and a reply comments in this proceedings in the summer of 2002.
- The FCC issued a NPRM on May 24, 2002 which asked for comments on whether the structural separation requirements set forth in Section 272(b) of the Act should be extended. Under Section 272(f)(1) of the Act, the requirements imposed by Section 272(b) will sunset unless the FCC by rule or order extends them. The Ratepayer Advocate filed a comment and a reply comment in this proceeding urging the FCC to continue the structural separation requirements set forth in Section 272(b). The Ratepayer Advocate believes that the structural separation requirements should not sunset. Instead, in order for the FCC to determine whether the Section 272 requirements should sunset in a particular jurisdiction, it should undertake a multifactor analysis on an application filed by

the BOC. That analysis would assess the market power of a BOC and if the JBOC lacks market power, the requirements of Section 272(b) could sunset. The Ratepayer Advocate foresees the publication of proposed rules for further comment that establish these criteria and procedures for examination of the BOC's application. In the event that a BOC establishes it no longer has market power, the Ratepayer Advocate submits that non-structural safeguards, including the application of Section 64.1903, should remain in order to monitor and help prevent backsliding. The FCC has previously had occasion to first establish, and subsequently, based on changed market conditions, lift structural requirements in another setting, substituting them with non-structural safeguards. The Ratepayer Advocate submits that the FCC can similarly do so here in order to advance the fundamental thesis of the Act – fair competition. Section 272(e)(1) is best enforced through quarterly reporting on service quality. Self-executing remedies and penalties would also assist in prevention of backsliding. An annual audit would also be necessary to monitor continued compliance with quarterly reporting.

OTHER TELECOMMUNICATIONS PROCEEDINGS

CAT COMMUNICATIONS INTERNATIONAL, INC., BPU Docket No. TC01080526

CAT Communications is a CLEC that provides pre-paid local telephone service to credit-impaired customers; customers were found to be completing “dial around (10-10-XXX)” long-distance calls over Sprint’s long-distance network; since CAT’s customers are pre-paid, it was difficult for Sprint to collect the long-distance charges; Sprint filed for and was granted a Federal injunction that compelled CAT to order from Verizon New Jersey (“Verizon NJ”) toll-blocking that would prevent CAT customers from accessing the Sprint network; the injunction was subsequently dissolved, and the lifting of the injunction is now being appealed. While the injunction was in place, CAT accrued bills for the toll-blocking of approximately \$5 million. This case has been transferred to the OAL where they will examine the tariffed charges for the toll-blocking services, and determine whether the fees that Verizon NJ charged CAT reflect a proper application of the tariff. The Ratepayer Advocate is monitoring this proceeding to determine whether Verizon NJ properly imposed rates for toll-blocking.

GLOBAL NAPS V. BELL ATLANTIC-NEW JERSEY, INC., AND BPU, US District Court Docket No. 99-CV4074

This matter, brought before the US District Court by Global NAPs, concerns a dispute regarding the payment of reciprocal compensation to Bell Atlantic-New Jersey (now known as Verizon New Jersey) for internet traffic. The Board was named as a defendant because Global NAPs alleges that the Board misinterpreted an FCC order, which in turn led to the imposition of improper charges. There are several important issues in this proceeding. Unlike the stance taken generally by utilities, Bell Atlantic refused to consent to Ratepayer Advocate intervention in this matter. The Ratepayer Advocate filed formally for intervention, briefed (and reply briefed) the issue, and prevailed. The Board sought to be dismissed from

the case on grounds of governmental immunity. The Ratepayer Advocate opposed the motion for dismissal (as did the other parties), and prevailed. This position was recently confirmed in another case before the US Supreme Court.

The Ratepayer Advocate's interest in this matter is whether the Board misinterpreted and then imposed the FCC ruling on the parties. The Ratepayer Advocate maintains that both the interpretation and imposition were improper. Bell Atlantic filed for dismissal, and oral arguments were held last summer; no decision has yet been issued. Additionally, Global NAPs assured the Board informally that if the Board approved a new interconnection agreement between Global NAPs and Verizon New Jersey, then Global NAPs would drop the Board as a respondent in this case. Although the Board approved that new agreement last year, the Board has not been dropped as a party to the action as of January, 2003.

WORLDCOM TECHNOLOGIES, INC. V. VERIZON NEW JERSEY, BPU Docket No. TC99090669

This matter involves a dispute brought by WorldCom regarding the payment of reciprocal compensation for Internet service provider traffic ("ISP traffic") to Verizon New Jersey. The Ratepayer Advocate intervened in this case in 1999, when no formal State or Federal standard had been established for such matters. In April 2001, the FCC issued new ISP compensation rules. Since this case now involves relief for historic harm only, as opposed to a decision that would have prospective and general applicability for other carriers, the Ratepayer Advocate continues only to monitor this case, but will respond to public interest issues. The parties are submitting briefs on the issue of summary disposition as of January, 2003.

ATT COMM. OF NEW JERSEY V. VERIZON NEW JERSEY, BPU Docket No. TC99110838

This proceeding concerns substantively the identical issues discussed in the WorldCom matter, above. Both matters are being heard at the OAL by the same ALJ. The Ratepayer Advocate will continue to monitor the case to protect the public interest.

IV. CABLE TELEVISION PROCEEDINGS

A. INTRODUCTION: STEADILY RISING CABLE RATES

In response to rising cable rates, Congress directed the FCC to establish rules to govern rate regulation of service tiers offered by cable systems that are not subject to effective competition. The FCC set up a dual regulatory scheme: the local franchise authority (in New Jersey the Board of Public Utilities) regulates the Basic Service Tier ("BST") while the FCC regulates the Cable Programming Service Tier ("CPST"). The FCC's authority to regulate the rates charged by cable systems for the CPST ended on March 31, 1999. The deregulation of the CPST has resulted in cable rate increases that by far exceed the rate of inflation. For instance, in 1999 cable rates for the CPST rose an average of 10% and 9% in 2000. Additionally, deregulation has not resulted in an increase of competition between cable providers.

However, local franchise authorities continue to have regulatory authority over rates charged for the BST. The BST includes, at minimum, the local broadcast signals distributed by the cable operator and any public, educational, and governmental access channels. The BST also includes charges for the equipment necessary to provide cable service. As a practical matter, however, local franchise control over the BST is limited. In accordance with FCC standards and procedures, operators may request and receive annual rate increases for the BST for inflation, system upgrades, equipment cost increases (FCC Forms 1205 and 1235), and programming cost increases (FCC Form 1240).

The Ratepayer Advocate is an active party in all cable rate proceedings before the Board and the Office of Administrative Law. Our efforts have resulted in millions of dollars in refunds, rate decreases and rate freezes for many New Jersey cable subscribers. Through its participation in cable proceedings, the Ratepayer Advocate seeks to create a pro-competitive market with the expectation of lower rates and greater access for all classes of ratepayers. Where competition has not developed as quickly as anticipated, the Ratepayer Advocate as a representative of the consumer endeavors to ensure that ratepayers are protected from unfair rates or services of unregulated, monopoly cable operators until such time the market can provide effective competition.

The Ratepayer Advocate is currently reviewing numerous cable applications. Certain of these applications will be resolved through settlement negotiations among the Ratepayer Advocate, the New Jersey Office of Cable Television, and the cable operator; other applications will be litigated fully before the Office of Administrative Law. A summary of current cases, and company positions, is presented below. In each case, the Ratepayer Advocate endeavors to ensure that rate adjustments reflect accurately the actual costs incurred by the cable operators, which in turn ensures that consumers pay fair and reasonable rates.

B. CABLE TELEVISION MATTERS BEFORE THE BOARD OF PUBLIC UTILITIES

COMCAST CABLEVISION SYSTEMS (“COMCAST”) RATE CASES: BPU DOCKET NOS. CR02100710; CR0210071; CR02100712; CR02100713; CR02100714; CR02100715; CR02100716; CR02100717; CR02100718; CR02100719; CR02100720; CR02100721; CR02100723.

Comcast has filed Form 1240 relating to numerous municipalities in New Jersey in order to obtain higher cable rates. As of January, 2003, the following cases are currently under review by the Ratepayer Advocate to determine if the rate requested is appropriate and supported by Comcast’s financial data.

Burlington County – The Company is requesting a decrease in its Maximum Permitted Rate (“MPR”) from \$11.64 to \$11.19. The actual rate being charged, the Operator Selected Rate (“OSR”), would decrease from \$11.59 to \$11.15. The proposed decrease in the MPR amounts to \$0.45, which is composed of an increase of \$0.01 in external costs, offset by a decrease of \$0.35 in true-up costs and a decrease of \$0.11 in inflation. The Company is proposing that the number of channels on the basic service tier remain unchanged at 22.

East Brunswick – The Company is requesting a decrease in its MPR from \$14.53 to \$14.23. The OSR would decrease from \$14.18 to \$13.95. The proposed decrease in the MPR amounts to \$0.30, which is composed of an increase of \$0.02 in external costs offset by a decrease of \$0.19 in true-up costs and a decrease of \$0.14 in inflation (numbers do not add due to rounding). The Company is proposing that the number of channels on the basic service tier increase from 28 to 29.

East Windsor – The Company is requesting an increase in its MPR from \$15.91 to \$16.70. The OSR would decrease from \$14.18 to \$13.95. The proposed increase in the MPR amounts to \$0.79, which is composed of an increase of \$0.07 in external costs and of \$0.72 in true-up costs. The Company is proposing that the number of channels on the basic service tier remain unchanged at 29.

West Windsor – The Company is requesting a decrease in its MPR from \$14.22 to \$13.99. The OSR would decrease from \$14.18 to \$13.95. The proposed decrease in the MPR amounts to \$0.23, which is composed of an increase of \$0.06 in external costs and a decrease of \$0.29 in true-up costs. The Company is proposing that the number of channels on the basic service tier remain unchanged at 29.

Garden State (Carney’s Point) – The Company is requesting a decrease in its MPR from \$10.50 to \$10.41. The OSR would remain at \$9.30. The proposed decrease in the MPR amounts to \$0.09. This decline is composed of a decrease of \$0.30 in external costs and a decrease of \$0.10 in inflation costs, offset by an increase of \$0.24 in true-up costs and an increase of \$0.07 in other costs (channel counts changes). The Company is proposing to increase the number of channels on the basic service tier from 18 to 25.

Garden State (all areas except Carney's Point) – The Company is requesting a decrease in its MPR from \$9.73 to \$9.71. The OSR would increase from \$9.30 to \$9.65. The proposed decrease in the MPR amounts to \$0.02, which is composed of an increase of \$0.01 in external costs and an increase of \$0.07 in true-up costs, offset by a reduction of \$0.10 in inflation. The Company is proposing that the number of channels on the basic service tier remain unchanged at 21.

Gloucester County – The Company is requesting a decrease in its MPR from \$12.58 to \$12.18. The OSR would decrease from \$12.38 to \$12.15. The proposed decrease in the MPR amounts to \$0.40. This decline is composed of an increase of \$0.01 in external costs, offset by a decrease of \$0.29 in true-up costs and a decrease of \$0.12 in inflation. The Company is proposing that the number of channels on the basic service tier remain unchanged at 23.

Monmouth County – The Company is requesting a decrease in its MPR from \$13.48 to \$13.21. The OSR would decrease from \$12.89 to \$12.50. The proposed decrease in the MPR amounts to \$0.27. This decline is composed of an increase of \$0.02 in external costs and an increase of \$0.01 in other costs (channel counts), offset by a decrease of \$0.17 in true-up costs and a decrease of \$0.13 in inflation costs. The Company is proposing to increase the number of channels on the basic service tier from 23 to 24.

Monmouth County (Freehold) – The Company is requesting a decrease in its MPR from \$12.94 to \$12.54. The OSR would decrease from \$12.89 to \$12.50. The proposed decrease in the MPR amounts to \$0.40. This decline is composed of an increase of \$0.02 in external costs and an increase of \$0.01 in other costs (channel counts), offset by a decrease of \$0.30 in true-up costs and a decrease of \$0.13 in inflation. The Company is proposing to increase the number of channels on the basic service tier from 23 to 24.

Northwest New Jersey – The Company is requesting a decrease in its MPR from \$12.39 to \$12.31. The OSR would increase from \$11.70 to \$12.25. The proposed decrease in the MPR amounts to \$0.08, which is composed of an increase of \$0.03 in external costs and an increase of \$0.01 in true-up costs, offset by a decrease of \$0.12 in inflation. The Company is proposing that the number of channels on the basic service tier remain unchanged at 22.

Ocean County – The Company is requesting a decrease in its MPR from \$13.65 to \$13.27. The OSR would decrease from \$13.43 to \$13.25. The proposed decrease in the MPR amounts to \$0.38. This decline is composed of a \$0.01 increase in external costs, offset by a \$0.25 decrease in true-up costs and a \$0.14 decrease in inflation. The Company is proposing that the number of channels on the basic service tier remain unchanged at 23.

Plainfield – The Company is requesting a decrease in its MPR from \$12.89 to \$12.42. The OSR would decrease from \$12.84 to \$12.40. The proposed decrease in the MPR amounts to \$0.47. This decline is composed of an increase of \$0.01 in external costs and an increase of \$0.01 in other costs (channel counts), offset by a decrease of \$0.36 in true-up costs and a decrease of \$0.13 in inflation. The Company is proposing that the number of channels on the basic service tier increase from 20 to 21.

Time Warner – The Company is requesting a decrease in its MPR from \$10.57 to \$10.50. The proposed decrease in the MPR amounts to \$0.07, which is composed of an increase of \$0.12 in external costs, offset by a decrease of \$0.09 in true-up costs and a decrease of \$0.10 in inflation. The Company is proposing that the number of channels on the basic service tier decrease from 20 to 19.

CABLEVISION SYSTEMS CORP. ("CABLEVISION") RATE CASES: BPU DOCKET NOS. CR02110838, CR02110843, CR02110844, CR02110845, CR02110846, CR02110847, CR02110848, CR02110849, CR02110850, CR02110831, CR02110832, CR02110833, CR02110834, CR02110835, CR02110836, CR02110837, CR02110839, CR02110840, CR02110841, CR02110842

Cablevision has filed forms 1205 and 1240 relating to numerous municipalities in New Jersey. Certain of these filings are on an expedited track at the Office of Administrative Law. They are: Hudson County, Freehold, Jackson, Lakewood, Millstone, Seaside, Wall, Bayonne, Bergen, Oakland, and Paterson. These matters are being handled by the Board's expedited cable procedures.

Certain other filings (Mahwah, Montvale, West Milford, Elizabeth, Hamilton, Morris, Raritan Valley, and all 1205 filings) have been transferred as contested matters to the Office of Administrative Law. The Ratepayer Advocate has propounded discovery and is awaiting responses from Cablevision as of January, 2003.

A brief summary of each pending case follows.

Bayonne-The Company is proposing to decrease its MPR from \$11.31 to \$10.93, a decrease of \$0.38 or 3.32%. This decrease is composed of an increase of \$0.06 in external costs, a decrease of \$0.46 in the true-up, and an increase of \$0.02 in inflation. The Company is proposing to increase the channels on the BST from 16 to 23. The current OSR is \$11.31. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Bergen-The Company is proposing to decrease its MPR from \$12.69 to \$12.41, a decrease of \$0.28 or 2.24%. This decrease is composed of an increase of \$0.07 in external costs, a decrease of \$0.38 in the true-up, and an increase of \$0.03 in inflation. The Company is proposing to increase the channels on the BST from 20 to 23. The current OSR is \$12.69. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Elizabeth-The Company is proposing to decrease its MPR from \$11.98 to \$11.83, a decrease of \$0.15 or 1.22%. This decrease is composed of a decrease of \$0.41 in external costs, an increase of \$0.14 in the true-up, an increase of \$0.03 in inflation, and an increase in channel count adjustments of \$0.09 (vs. the prior Projected Period). The Company is proposing to decrease the channels on the BST from 24 to 20. The current OSR is \$11.98. The Company has not decided upon a proposed OSR. This case will be litigated at the OAL.

Hamilton-The Company is proposing to decrease its MPR from \$17.87 to \$17.56, a decrease of \$0.31 or 1.74%. This decrease is composed of a decrease of \$0.37 in external costs, an increase of \$0.02 in the true-up, and an increase of \$0.04 in inflation. The Company is proposing to decrease the channels on the BST from 32 to 30. The current OSR is \$17.87. The Company has not decided upon a proposed OSR. This case will be litigated at the OAL.

Hudson-The Company is proposing to increase its MPR from \$10.64 to \$10.78, an increase of \$0.14 or 1.37%. This increase is composed of a decrease of \$0.02 in external costs, an increase of \$0.10 in the true-up, an increase of \$0.03 in inflation, and an increase in channel count adjustments of \$0.03 (vs. prior Projected Period). The Company is proposing to decrease the channels on the BST from 25 to 22. The current OSR is \$10.64. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Monmouth (Freehold)-The Company is proposing to increase its MPR from \$12.41 to \$12.97, an increase of \$0.56 or 4.51%. This increase is composed of an increase of \$0.06 in external costs, an increase of \$0.47 in the true-up, and an increase of \$0.03 in inflation. The Company is proposing that the number of BST channels remain at 24. The current OSR is \$11.74. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Monmouth (Jackson)-The Company is proposing to increase its MPR from \$12.02 to \$12.30, an increase of \$0.28 or 2.33%. This increase is composed of an increase of \$0.08 in external costs, an increase of \$0.17 in the true-up, and an increase of \$0.03 in inflation. The Company is proposing that the number of BST channels remain at 24. The current OSR is \$11.74. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Monmouth (Lakewood)-The Company is proposing to increase its MPR from \$11.74 to \$11.78, an increase of \$0.04 or 0.37%. This increase is composed of an increase of \$0.05 in external costs, a decrease of \$0.04 in the true-up, and an increase of \$0.03 in inflation. The Company is proposing that the number of BST channels remain at 24. The current OSR is 11.74. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Monmouth (Millstone)-The Company is proposing to increase its MPR from \$9.94 to \$9.99, an increase of \$0.05 or 0.51%. This increase is composed of an increase of \$0.06 in external costs, a decrease of \$0.03 in the true-up, and an increase of \$0.02 in inflation. The Company is proposing that the number of BST channels remain at 24. The current OSR is \$9.94. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Monmouth (Seaside)-The Company is proposing to increase its MPR from \$11.36 to \$11.45, an increase of \$0.09 or 0.82%. This increase is composed of an increase of \$0.10 in external costs, a decrease of \$0.03 in the true-up, and an increase of \$0.02 in inflation. The Company is proposing to increase the channels on the BST from 19 to 23. The current OSR

is \$11.36. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Monmouth (Wall)-The Company is proposing to increase its MPR from \$9.71 to \$9.76, an increase of \$0.05 or 0.54%. This increase is composed of an increase of \$0.06 in external costs, a decrease of \$0.03 in the true-up, and an increase of \$0.02 in inflation. The Company is proposing to increase the channels on the BST from 22 to 24. The current OSR is \$9.71. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Morris-The Company is proposing to decrease its MPR from \$9.34 to \$8.95, a decrease of \$0.39 or 4.13%. This decrease is composed of a decrease of \$0.30 in external costs, a decrease of \$0.12 in the true-up, an increase of \$0.02 in inflation, and an increase in channel count adjustments of \$0.01. The Company is proposing to increase the channels on the BST from 20 to 22. The current OSR is \$9.34. The Company has not decided upon a proposed OSR. This case will be litigated at the OAL.

Newark-The Company is proposing to increase its MPR from \$6.74 to \$7.02, an increase of \$.028 or 4.12%. This increase is composed of an increase of \$0.25 in external costs, an increase of \$0.01 in the true-up, an increase of \$0.01 in inflation, and an increase in channel count adjustments of \$0.01. The Company is proposing to increase the channels on the BST from 19 to 21. The current OSR is \$6.74. The Company has not decided upon a proposed OSR. This case will be litigated at the OAL.

Oakland-The Company is proposing to decrease its MPR from \$10.20 to \$9.78, a decrease of \$0.42 or 4.15%. This decrease is composed of a decrease of \$0.34 in external costs, a decrease of \$0.11 in the true-up, an increase of \$0.02 in inflation, and an increase in channel count adjustments of \$0.01. The Company is proposing to increase the channels on the BST from 24 to 25. The current OSR is \$10.20. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Patterson-The Company is proposing to decrease its MPR from \$10.11 to \$8.98, a decrease of \$1.13 or 11.18%. This decrease is composed of a decrease of \$0.37 in external costs, a decrease of \$0.61 in the true-up, an increase of \$0.02 in inflation, and a decrease in channel count adjustments of \$0.17. The Company is proposing to increase the channels on the BST from 25 to 26 and then reduce the BST by one channel, resulting in no net change. The current OSR is \$10.11. The Company has not decided upon a proposed OSR. This case is being handled on an expedited/settlement procedural track.

Raritan Valley-The Company is proposing to decrease its MPR from \$12.55 to \$12.32, a decrease of \$0.23 or 1.82%. This decrease is composed of a decrease of \$0.65 in external costs, an increase of \$0.29 in the true-up, an increase of \$0.03 in inflation, and an increase in channel count adjustments (vs. the prior Projected Period) of \$0.10. The Company is proposing to decrease the channels on the BST from 27 to 22. The current OSR is \$12.55. The Company has not decided upon a proposed OSR. This case will be litigated at the OAL.

Rockland/Ramapo (Mahwah)-The Company is proposing to increase its MPR from \$13.22 to \$13.80, an increase of \$0.58 or 4.41%. This increase is composed of an increase of \$0.12 in external costs, an increase of \$0.35 in the true-up, an increase of \$0.03 in inflation, and an increase in channel count adjustments (vs. the prior Projected Period) of \$0.08. The Company is proposing to decrease the channels on the BST from 27 to 24. The current OSR is \$13.22. The Company has not decided upon a proposed OSR. This case will be litigated at the OAL.

Rockland/Mahwah (Montvale)-The Company is proposing to increase its MPR from \$12.81 to \$14.06, an increase of \$1.25 or 9.79%. This increase is composed of an increase of \$0.90 in external costs, an increase of \$0.31 in the true-up, an increase of \$0.03 in inflation, and an increase in channel count adjustments of \$0.01. The Company is proposing to increase the channels on the BST from 23 to 25. The current OSR is \$12.81. The Company has not decided upon a proposed OSR. This case will be litigated at the OAL.

West Milford-The Company is proposing to decrease its MPR from \$12.31 to \$12.25, a decrease of \$0.06 or 0.49%. This decrease is composed of a decrease of \$0.45 in external costs, an increase of \$0.28 in the true-up, an increase of \$0.03 in inflation, and an increase in channel count adjustments (vs. the prior Projected Period) of \$0.08. The Company is proposing to decrease the channels on the BST from 26 to 24. The current OSR is \$12.31. The Company has not decided upon a proposed OSR. This case will be litigated at the OAL.

RATEPAYER ADVOCATE'S SETTLEMENT AGREEMENT IN THE MATTER OF COMCAST CABLEVISION OF AVALON 1240 FILING FOR A RATE CHANGE TO SET ITS MAXIMUM PERMITTED RATES FOR REGULATED CABLE SERVICES, AND IN THE MATTER OF COMCAST CABLE COMMUNICATIONS, INC., SUBSIDIARIES TO DETERMINE REGULATED EQUIPMENT AND INSTALLATION RATES, BPU Docket Nos. CR02030134, AND CR02030137

In 2002, the Ratepayer Advocate participated in the systemwide 1205 filing made by Comcast Cable Communications, Inc., referred to the Office of Administrative Law for hearing and in the 1240 filing of Comcast Cablevision of Avalon, Inc., also referred to the OAL and consolidated with the 1205 proceeding. Comcast sought to increase its installation charge to \$51.30 by increasing the hourly service rate to \$36.22 and by increasing installation times. In addition, Comcast asked for an increase in basic service tier rates to reflect increases in inflation and programming costs.

The Ratepayer Advocate proposed in testimony an hourly service charge rate of \$30.34, a reduction in installation work times, and a reduction in remote charges. In addition, the Ratepayer Advocate questioned Comcast's claimed increases in programming costs. The 1205 filing affects rates in all areas in New Jersey served by Comcast. The 1240 filing affects Comcast's customers in Avalon. The Ratepayer Advocate is committed to ensuring that cable rates remain just, fair, and reasonable for the basic service tier. Since the Federal Communications Commission no longer regulates the upper tier service rates and does not permit state regulation of that tier, ratepayer's interests are very affected. The parties entered

into a stipulated settlement which made substantial reductions in equipment and installation rates. For example, the hourly service rate was set at \$31.25 instead of Comcast's proposed rate of \$36.13. The effective dates of the costs for equipment and installation services for Comcast vary according to the systems. Comcast has six effective dates for its 1205 rates. They are:

June 1, 2002	Comcast of Wildwood (Maple Shade/Gloucester systems)
August 1, 2002	Comcast Long Beach Island and Comcast Cablevision of New Jersey, LLC (Toms River, Cedar Bonnet Island, and Crestwood Village)
November 1, 2002	Comcast (Jersey City, Meadowlands, Mercer County, Hopewell Valley, Lawrence, Union Verona, East Orange/Woodbridge (Comcast Cablevision of New Jersey, Inc.)
January 1, 2003	Comcast of Burlington County, Central New Jersey (East Brunswick, East Windsor, and West Windsor), Garden State (Garden State and Carney's Point systems), Gloucester County, Monmouth County, Northwest New Jersey, Ocean County and Plainfield.
February 1, 2003	Comcast Hopewell/Lambertville, South Jersey (Pleasantville includes Atlantic City/Brigantine, Downbeach, East 1 & 2, West, Vineland systems which includes Franklinville N & S , Franklinville 6 Towns, Salem, Turnersville and Vineland and Wildwood.
June 1, 2003	Comcast of Avalon.

C. THE RATEPAYER ADVOCATE'S RECOMMENDATIONS ON CABLE TELEVISION PROCEEDINGS BEFORE THE FCC

RATEPAYER ADVOCATE PROPOSES MEASURES TO ENSURE RATIONAL CABLE RATES, FCC Docket No. 02-144

Federal Communications Commission regulations (and the statutes upon which those regulations are premised) contemplate regulation of three distinct types of cable television service. They are the basic service tier ("BST"), cable programming service tier (which can include channels not provided as part of the basic service package) ("CPST"), and services offered on a per-channel or per-program basis (*i.e.*, "pay-per-view"). Historically, both BST and CPST were regulated by the FCC. BST rates were established by measurement against historic benchmarks, adjusted for inflation and other factors; CPST rates were regulated in accordance with FCC-prescribed guidelines, implemented by local authorities, and investigated on a complaint basis only.

The Telecommunications Act of 1996 Act eliminated CPST regulation as of March 1999. Accordingly, the FCC is now investigating what, if any, vestiges of CPST regulation should be eliminated from FCC rules and practice.

The BST benchmarks are set at 1994 rates or adjusted 1992 rates in areas where cable providers were subject to effective competition. The benchmarks are adjusted for inflation and other factors. The FCC also provides a "cost-of-service" safety valve for providers unable to recover costs under the benchmark system.

Since 1999, when CPST regulation was eliminated, local operation and franchising authorities' practices have varied greatly with regard to channel addition and deletion in the tiers. The current rules could permit a reduction in channels without a proportionate reduction in BST rates since the adjustment factors are constructed on the basis of CPST regulation, which does not exist anymore.

On November 4, 2002, the Ratepayer Advocate filed comments in response to a Notice of Proposed Rulemaking (NPRM) issued by the FCC on June 19, 2002. In these comments, the Ratepayer Advocate supported recalibration of the BST rates and other steps intended to achieve fair and rational ratemaking. The Ratepayer Advocate also recommended the utilization of existing regulation as a "stop-gap" measure until the FCC completes a proceeding that will provide a rational methodology for the regulation of cable television. The Ratepayer Advocate recommended that the FCC oversee the generation of new benchmark cable rates, based on current market conditions. The use of benchmark rates that are closely matched to actual existing costs would produce logical, rational, and streamlined regulatory mechanisms, and would also provide transparency to consumers. The Ratepayer Advocate noted that the latter should empower consumers with the ability to make better-informed decisions when selecting among alternative video providers.

In Reply Comments filed on November 25, 2002, the Ratepayer Advocate urged the FCC to reject recommendations that all cable systems in a state with 15% Direct Broadcast

Satellite ("DBS") penetration rate be reclassified as competitive. The rates of cable operators subject to competition are not regulated. The Ratepayer Advocate noted that, even when a statewide average may demonstrate DBS presence, there may be pockets within the state that are not receiving DBS at levels sufficient to create meaningful competition with the local cable provider. Therefore, the Ratepayer Advocate argued that the presence of DBS competition should be measured in a local area, rather than in a state-wide basis. As of January, 2003, a decision has not yet been issued in this proceeding.

RATEPAYER ADVOCATE RECOMMENDS LOCAL OVERSIGHT OF SERVICE QUALITY STANDARDS AND OPEN ACCESS FOR CABLE MODEMS, FCC Docket No. 02-52

In an FCC proceeding investigating appropriate regulatory treatment for broadband access to the internet of cable facilities, the Ratepayer Advocate filed comments on June 10, 2002, arguing for local franchising authority oversight of service quality issues. The Ratepayer Advocate argued that local oversight would best ensure the maintenance of service quality for consumers. The Ratepayer Advocate also recommended the creation of mechanisms to ensure consumer choice of internet service providers over cable facilities. A decision in this matter has not yet been issued as of January, 2003.

RATEPAYER ADVOCATE FILES OPPOSITION TO CABLEVISION'S APPEAL OF BOARD RATE ORDER WHICH REQUIRED CABLEVISION TO SUBMIT A TRUE-UP FILING FOR ITS ALLAMUCHY SYSTEM, FCC File No. CSB-A-0684

On November 29, 2002, Cablevision filed with the FCC a stay and appeal of a rate order issued by the New Jersey Board of Public Utilities. Cablevision contends that the Board lacked the authority to require a final true-up filing for the Allamuchy system given the fact that the Board's regulatory authority essentially ended on January 31, 2002, the date the FCC deemed the Allamuchy system to be subject to effective competition.

The Ratepayer Advocate filed its opposition to Cablevision's appeal on December 16, 2002, supporting the Board's decision to require Cablevision to submit a final true-up filing for the Allamuchy system in order to assess whether the cable rates charged to Allamuchy subscribers during the projected period are below or exceed the actual costs incurred by Cablevision.

In its opposition to Cablevision's appeal, the Ratepayer Advocate argued in support of the Board's decision that the Board's authority to require Cablevision to submit a final true-up filing is not precluded by the finding of effective competition in the Allamuchy system by the FCC, and that since the true-up period predated the deregulation, the Board is permitted to require a true-up filing for a period of time that the affected rates were still subject to regulation by the Board. Also, the Board has the authority to request true-up filings for both rebuild and non-rebuild systems because there is no FCC rule exempting cable operators from true-up procedures for non-rebuild systems once the system is migrated to a rebuild system.

The true-up filing requirements are an integral part of the FCC Form 1240 process because it ensures that cable subscribers are paying cost-based rates for their cable services. The New Jersey Board of Public Utilities, as the regulator of basic service rates is therefore charged with making sure the true-up procedure is followed. Any attempt to circumvent this important step in the Form 1240 process must be rejected in order to protect the interests of cable subscribers and the Ratepayer Advocate fully supports the Board's actions in this matter. As of January, 2003, there is no FCC decision in this matter.

V. WATER AND WASTEWATER

A. WATER QUALITY ISSUES

The Ratepayer Advocate represents all consumers in water and water proceedings before the Board of Public Utilities including any proceeding which may affect the rates that consumers pay for water, as well as corporate structure cases such as mergers and acquisitions. The Ratepayer Advocate also evaluates the quality of service provided by water utilities, and has become increasingly active in protecting the supply of clean, safe, affordable drinking water for consumers. The Ratepayer Advocate works with water suppliers, municipalities and other state agencies to ensure that New Jersey's water supplies remain the highest quality water sources possible.

Most New Jersey residents consider water to be a plentiful, cheap resource. The fact is, however, that supplies of drinking water are finite and must be conserved and protected. New Jersey's rivers, lakes, reservoirs and aquifers, like those in many states around the country, are often subjected to such pollutants as acid rain, industrial and manufacturing effluent, fertilizers, pesticides, wastewater discharges, and storm water/roadway runoff. New Jersey's water sources are still plentiful, and can supply clean drinking water to all residents, but they face increasing environmental stress including isolated incidents that have achieved widespread notoriety, such as well contamination, as well as widespread incidents like drought conditions that brought warnings about aquifer depletion and reports of salt water encroachment up the Delaware River. These conditions highlight the need to take a long-term view of the water resource needs of New Jersey.

Many of the water rate increases throughout the state are triggered by the costs companies incur to comply with the Federal Clean Water Act ("CWA") and the Safe Drinking Water Act ("SDWA"). These two federal initiatives mandate that states adopt certain water treatment strategies, which have been implemented in New Jersey in the form of very expensive new water treatment plants. The costs of these new treatment plants are borne almost entirely by ratepayers. The Ratepayer Advocate has been instrumental in containing these costs by scrutinizing the engineering plans and accounting methods used by the utilities to support their rate increase petitions. However, the best long-term options for having clean, safe, affordable water are to keep existing water sources clean and to conserve existing clean water sources.

According to projections, New Jersey's population is expected to rise from a current estimate of 8.1 million to about 9 million by 2020. More residents mean more development, greater demand for water and increased storm water runoff. These factors place stress upon existing and future water supplies. The Ratepayer Advocate recognizes the importance of bringing together state officials, business people, environmentalists and residents to work together in developing long-term policies to protect this priceless resource.

The Ratepayer Advocate monitors and participates in the activities of several water supply and water quality organizations, including the New Jersey Department of Environmental

Protection (“NJDEP”) and the NJDEP-sponsored Watershed Management Public Advisory Committees; the Delaware River Basin Commission; the New Jersey Water Supply Advisory Council; the New Jersey Water Supply Authority; the Watershed Advisory Council; and the Clean Water Council, among others. Among the policy initiatives that is closely monitored by the Ratepayer Advocate is the NJDEP’s Source Water Assessment and Protection program. This program is designed to evaluate the susceptibility of ground and surface water supply sources to current and future contamination. The NJDEP plans to integrate this information into all statewide watershed management planning. The Ratepayer Advocate tracks the progress of this program on a state and local level, and will use the information when appropriate to evaluate future drinking water, and wastewater projects undertaken by utilities.

THE DELAWARE RIVER BASIN COMMISSION

The Delaware River Basin Commission (“DRBC” or “Commission”) was formed in 1961 by the signatory parties to the Delaware River Basin Compact (Delaware, New Jersey, New York, Pennsylvania, and the United States Government) to share the responsibility of the Basin. The Commissioners are the Governors of the four states and the Secretary of the Interior of the United States. The Delaware River makes up the western border of New Jersey, flowing some 330 miles from the confluence of its East and West branches near Hancock, N.Y. south past Port Jervis, through the Delaware Water Gap, past Trenton and Philadelphia to the mouth of the Delaware Bay. The Basin includes 2,969 square miles of New Jersey and encompasses several important New Jersey watersheds.

The Ratepayer Advocate was active in the DRBC’s *Flowing Toward the Future* Regional Watershed Planning Workshop process, which began with ten intense, collaborative workshops in 1999 that brought together stakeholders from throughout the Delaware Basin. These workshops were followed by the formation of twenty Public Advisory Committees (“PACs”) for watersheds identified by the NJDEP throughout the state. The PACs met throughout the past three years and developed comprehensive vision statements and directions for protecting, maintaining and restoring the integrity of the waters of the Delaware River Basin ecosystem.

This first phase of the *Flowing Toward the Future* process culminated in the September 29, 1999 Governors’ Summit on the Delaware River Basin, held at the New Jersey State Aquarium in Camden, New Jersey. At the Governors’ Summit, New Jersey, joined by Pennsylvania, New York and Delaware signed a joint resolution reaffirming the signatories’ commitment to protecting the unique Delaware River ecosystem and supporting the activities of the *Flowing Toward the Future* participants. Following the Governor’s Summit, the Ratepayer Advocate has continued to be involved in many of the workshops and conferences throughout the Delaware Basin, collaborating and consulting with stakeholders from all member states, including environmental agencies, non-profit groups, colleges and universities, business groups and individuals.

The Ratepayer Advocate also monitors the DRBC’s public hearings, which cover such topics as reservoir releases for flood control, surface water withdrawals for power generation

and/or industrial use, and the permitting of sewage treatment discharges. While not an official party to the cases before the DRBC, the Ratepayer Advocate's involvement in the hearings provides important information concerning the quality of the water resources used by New Jersey water utilities. The Ratepayer Advocate submits comments on such matters to the DRBC whenever indicated.

The DRBC often takes the lead in establishing criteria for contaminant levels in the Delaware Basin. These criteria are referred to as "Total Maximum Daily Loads" or TMDLs, and they are a critical measure of pollution limits for waterbodies. The DRBC works with the EPA and the four state environmental regulator counterparts, including the NJDEP, to coordinate environmental policy and regulation for the entire length of the Delaware River. For example, the DRBC published rules regarding the assimilative capacity for certain toxic pollutants of the tidal portion of the Delaware River (from Trenton to the Delaware Bay). Similar rules which were subsequently adopted by the NJDEP. Close monitoring and involvement in the DRBC's work enables the Ratepayer Advocate to evaluate the need for past and future water utility investments related to the removal of these toxins from surface and ground water supplies, as well as from wastewater treatment plant discharges.

The Ratepayer Advocate supports the efforts of the DRBC to finalize a Comprehensive Watershed Management Plan, and monitored the public input into this plan during the public hearings held by the DRBC on November 8, 14 and 15, 2001. A broad-based Watershed Advisory Council has been established to provide guidance to the commission with the Plan's development. The Comprehensive Plan is an attempt to balance the various uses and needs of the basin's water resources by setting objectives to determine the in-stream flow requirements (or volume of water) needed for a healthy aquatic ecosystem, ensuring that adequate supplies of water are available for human needs through the year 2030 and setting flow requirements for water-based recreation-- an essential long-term view that is vital to the protection of New Jersey's water resources.

A Watershed Advisory Council workshop on December 4-5, 2001, resulted in a draft set of goals and objectives to guide the Comprehensive Plan development process. In February, 2002, the DRBC engaged nearly a dozen committees, both standing and *ad hoc*, to review various portions of the draft framework document. By May 14, 2002, the Watershed Advisory Council began reviewing and incorporating suggestions from the committees, and a revised draft of the Comprehensive Plan was released in July, 2002. The Council and the DRBC continue to refine the Plan, and it remains a work in progress.

At this stage, the DRBC defines the re-development of the Comprehensive Plan as a two-phase update. Since the existing plan was basically a loosely organized collection of DRBC policies, rules and projects, the DRBC has begun to formally organize and codify these materials as the first phase update. The goal of this effort is to make the Comprehensive Plan a manageable formal document that will provide a framework for a basinwide vision, long-range goals, and directions to guide water resources management now and in the future.

The second phase of the Comprehensive Plan update will take place over the next two to three years. The Plan will address the water-related issues specified in the Delaware River Basin Compact, including surface and ground water supply, water quality, regulation and

maintenance of instream flows, protection of environmental resources, flood protection, recreation, and power generation. Performance measures and indicators will be developed, to gauge the progress in achieving the Plan's goals. These activities will rely heavily on the expertise of the committees that are involved in the review of the draft plan, as well as the resources of the NJDEP and its counterparts. The roles of intergovernmental and non-governmental entities and their relationships will also be addressed. The Ratepayer Advocate will monitor the activities and recommendations of the Watershed Advisory Council and offer comments and suggestions from the perspective of the individual water customer when appropriate.

WATERSHED MANAGEMENT AREA PUBLIC ADVISORY COMMITTEES (PACs)

The Ratepayer Advocate participates in and learns from the New Jersey Department of Environmental Protection's ("NJDEP") Watershed Management process. The NJDEP is engaged in an intensive information gathering and assessment effort throughout the state. The NJDEP has divided New Jersey into twenty Watershed Management Areas that reflect the natural watersheds that exist in the state, and is devoting important resources to assessing the condition of the water resources in each area. The Ratepayer Advocate monitors the excellent progress that the NJDEP and the public groups have made in this undertaking. Ratepayer Advocate staff is involved with the work of the Musconetcong Watershed Management Area (WMA) PAC, the Rockaway River Watershed Cabinet, the Whippany River Watershed Action Committee, the Passaic River Coalition and Ten Towns Great Swamp Committee, and the Raritan Basin Watershed Management Project. These organizations are among the many public groups that work with the NJDEP in many areas, including the NJDEP's extensive Watershed Management program. The Ratepayer Advocate staff attends many of the meetings of these and other similar groups in an effort to stay close to the issues that the everyday water and wastewater customers face and experience.

A good example of the WMA PAC process is the experience of the Musconetcong committee. The Ratepayer Advocate Staff was fortunate to be able to participate in much of the early work done by the WMA #1 (Musconetcong) PAC. The NJDEP designated as WMA #1 the Upper Delaware Basin Zone, which includes the Musconetcong River tributary of the Delaware River and encompasses a large geographic area in the northwest corner of the state, including all of Warren County and parts of Sussex, Morris and Hunterdon counties. Several large reservoirs are located in this part of the state, and there are many recreational opportunities that rely on clean water in the many creeks and lakes that dot the area. This is also an area with a rapidly growing population. The Ratepayer Advocate participated in the early focus groups and several subcommittees established by the Musconetcong PAC, including the Water Resources working group and the Non-Point Source Pollution working group. These groups identified specific issues that must be addressed if the goals of the PAC are to be met, such as remedying the lack of a water resources database, reducing the impact of land use decisions on water supplies, and buffering water resources with natural greenways that can absorb excess soil, pesticide, fertilizer or parking lot/roadway runoff.

The Ratepayer Advocate assisted with the development and approval of the WMA #1 PAC's strategic action plan, which is the first step in what will become the ongoing process of incorporating the principles of "smart growth" and sustainable development into long term Watershed Management Area Plans. Such strategic action plans have been or are being developed in all twenty NJ DEP designated WMA's, and allow the PAC's to seek funding for specific activities, and to hire experts to coordinate the efforts of individual volunteers, interested community groups and other stakeholders. The Ratepayer Advocate will continue to participate in the activities of the WMA PACs around the state, lending its expertise and knowledge about the concerns of New Jersey residents and businesses that need clean, safe and affordable drinking water supplies.

B. WATER BASE RATE CASES

WILDWOOD WATER UTILITY; BPU DOCKET NO. WR00100717, OAL DOCKET NO. PUCRS08189-OOS

On October 2, 2000, the City of Wildwood Water Utility ("Wildwood"), a municipal corporation of the State of New Jersey, subject to the jurisdiction of the BPU, filed a petition for interim and permanent rates for water service. Wildwood requested a 40.34% increase above the rates approved by the Local Finance Board. Wildwood serves approximately 3,399 water customers in the City of Wildwood and 8,539 water customers outside Wildwood's municipal border. Wildwood provides service to the City of North Wildwood, the Borough of West Wildwood, the Diamond Beach section of Lower Township and the Green Creek and Rio Grande sections of Middle Township.

Wildwood claimed the increase was needed to maintain its water distribution system and to upgrade its aging infrastructure. Wildwood also entered into a public/private partnership with Azurix North America, then a subsidiary of Enron Corp. Azurix was later sold to Thames Aqua Holdings Plc., becoming part of the utility group that owns the E'town Corporation and its New Jersey utility subsidiaries. (Thames is in the process of acquiring American Water Works, the parent of New Jersey-American Water Works. See the description of the Thames/American transaction in the section below entitled Water Mergers and Acquisitions.) Under the partnership with Wildwood, Azurix will operate and manage the water system while Wildwood would still retain ownership of the assets. An element of the contract was the payment of large, up-front concession fees to Wildwood by Azurix, to be repaid by Wildwood over the life of the contract.

A major issue in the case was the repayment of concession fees. The Water Services Agreement provided that Azurix would pay Wildwood a concession fee of \$14.25 million. Wildwood elected, as permitted by N.J.S.A. 58:26-19 et seq., to retain all of the concession fees for City tax abatement and other uses. Four municipalities, Wildwood Crest, North Wildwood, Middle Township and Lower Township, to which Wildwood supplies water, received no part of the concession fee even though their rates include a part of the Management fee Wildwood pays to Azurix and they intervened in the case. The non-Wildwood customers argued that repayment of the concession fees is inappropriate, as

Wildwood did not share any of the concession fees paid by Azurix with the neighboring municipalities.

The Ratepayer Advocate reviewed Wildwood's filing and propounded discovery. Upon completion of the discovery process, the Ratepayer Advocate submitted expert witness testimony. Thereafter, the Ratepayer Advocate, Board Staff, and the municipal intervenors engaged in extensive settlement negotiations, and eventually managed to reach a settlement agreement and avoided the expense of litigation.

The settlement embodied the following terms:

- Zero rate increase, and past interim rates approved by the Local Finance Board of the Division of Community Affairs would be made permanent by the Board of Public Utilities.
- Wildwood Water Utility agreed not to file a new rate case before January 1, 2006, giving its customers a period of rate stability of 14 years, beginning with the last interim rate increase granted in 1992 through at least the first nine months of 2006.
- The utility also agreed that any future rate increase request would be linked to the aggregate Consumer Price Index of the South Jersey/Philadelphia region, with allowances for new capital investment.

The four municipal intervenors were satisfied that there would be no unfair recovery of concession fee repayments from the customers outside the municipal boundaries of Wildwood, and each individually approved of the settlement agreement.

CONSUMERS NEW JERSEY WATER COMPANY BASE RATE CASE BPU DOCKET NO. WR02030113, OAL DOCKET NO. PURCL020673-02S

Consumers New Jersey Water Company ("CNJ" or the "Company") filed a base rate case petition with the BPU on March 4, 2002. The original petition requested a rate increase of approximately \$2.7 million, or 16.68%. Subsequent revisions to CNJ's petition increased the requested rate increase to approximately \$3 million, or 18.75%. The parties to the case were the Petitioner CNJ, the Staff of the Board of Public Utilities ("BPU" or "Staff") and the Division of the Ratepayer Advocate ("Ratepayer Advocate"). The Township of Hamilton requested "Participant" status on July 9, 2002, which was granted, but sent no representatives to the public hearings.

ISSUES IN CONTROVERSY

The primary reason for CNJ's request for a rate increase was the substantial investments in new plant that had been made since the last rate case. An issue related to these plant additions was the timing of additions projected to occur through the end of

calendar year 2002. Other factors claimed by the Company were revenue shortfalls due to the NJ DEP drought restrictions and the expectation of very large increases in general liability insurance premiums when the policies would be renewed in late 2002, primarily due to security issues arising after the events of September 11th, 2001. The Company did not propose any changes to its Cost of Service Allocations, or to the rates charged to its Public Fire, Private Fire, Miscellaneous or Golf Course customers, who all contribute revenues that are at or above their cost of service allocation. The Company proposed recovering any rate increase from the largest class of customers, the metered sales class, which includes all commercial, industrial and residential customers, who contribute revenues that are at or below their cost of service allocation.

The parties engaged in extensive discovery. Several settlement conferences were conducted. On July 9, 2002, two public hearings were held in the northern and central service territories of CNJ. The customers who attended the hearings had questions about the rate increase, and the parties adjourned the hearings so each customer could raise any questions with the Company, Staff and the Ratepayer Advocate. Once the customers' questions were answered, the hearings were adjourned.

The Ratepayer Advocate prepared but did not file direct testimony. Based on the evidence adduced through discovery and at the settlement conferences, the Ratepayer Advocate proposed an initial settlement offer of a rate increase of \$1,000,000 or approximately 6.25%, as an alternative to the Company's request for \$3 million, or \$18.75%.

The Ratepayer Advocate's settlement offer included consideration of the Company's projected capital investments through December 31, 2002 and an allowance for projected increases in general liability insurance, as well as for known and measurable changes to the Company's rate base, revenues and expenses. The parties continued negotiations and were finally able to reach a settlement for a rate increase of \$1.25 million, or approximately 7.9% on overall revenues. The proposed settlement was approved by the Administrative Law Judge assigned to the case, and transmitted to the Board for final approval.

Neither Staff nor the Ratepayer Advocate opposed the Company's Cost of Service Allocations in this case. Based on the proportion of revenues contributed by each class, the full rate increase was allocated to the Metered service class, which resulted in a marginally higher than overall rate increase to those customers. Under the new rates, an average residential customer using 80,000 gallons per year would experience a rate increase from \$295/year to \$322/year, an annual increase of \$27 or approximately 9.1 %. This residential rate is still below the current statewide average annual rate of \$335. Customers using less than 80,000 gallons/year would experience an even lower increase.

A significant factor in the Company's willingness to accept the figure was the agreement of Staff and the Ratepayer Advocate to permit the Company to seek the approval of this matter at the BPU's August 21, 2002 Agenda Meeting, in order to allow the Company to implement their new rates for the autumn planting season. Also, under current Board policy, the expenses associated with litigation are split between shareholders and ratepayers, and avoiding litigation helps keep these expenses to a minimum.

The proposed settlement of \$1.25 million was slightly higher than the Ratepayer Advocate's projected "best case" litigation outcome. However, the proposed settlement allowed customers to avoid an additional \$35-50,000 in litigation expenses that would have been incurred should the matter have been fully litigated. The settlement therefore achieved the best possible result, while conserving the resources of Staff and the Ratepayer Advocate along with the Office of Administrative Law. The Board approved the settlement on August 21, 2002.

I/M/O HALEDON WATER DEPARTMENT FOR APPROVAL OF INTERIM RATE INCREASES AND OTHER TARIFF MODIFICATIONS; BPU Docket No. WR01080532, OAL Docket No. PUC 7915-01N

The Haledon Water Department is administered by the Borough of Haledon and provides water service to customers within Haledon as well as the adjacent Boroughs of North Haledon and Totowa, the City of Paterson and the Township of Wayne. Within its service territory, the Petitioner serves approximately 1,871 water customers in Haledon and 1,204 customers in North Haledon. The additional service territories have less than five water customers in each township.

The Water Department purchases its water from the Passaic Valley Water Commission ("PVWC") under a contract dated February 19, 1997. The contract obligates the Water Department to purchase water from the PVWC at a rate not to exceed three million gallons per day ("MGD"). On an annual basis, the Borough must purchase a minimum of 365 Million Gallons. The Borough is obligated to pay the Commission's charges for water provided and to pay some of the cost of pumping.

The Water Department is subject to the jurisdiction of the Board and the New Jersey Department of Community Affairs, Local Finance Board ("LFB") for the rates charged for water service to customers outside the Borough of Haledon. *N.J.S.A. 40A:31-23(d)*; *N.J.S.A. 48:2-21(d)*, and *N.J.S.A. 40A:5A-25*. The municipal government has sole jurisdiction over the terms and conditions under which the utility supplies water within the city limits.

On August 14, 1991, the BPU approved a stipulation of settlement that provided for an increase in annual revenues of \$135,009, an increase of 17.97% over then current rates. Since that rate case, the Borough has received rate relief only through the LFB. On October 11, 2000, the LFB approved Haledon's request for a 4% rate increase for water service but conditioned that approval on the Borough's applying to the BPU for a permanent rate increase. Accordingly, Haledon filed the instant Petition on August 29, 2001.

In its Petition, Haledon sought approval for an increase in rates for water service to all customers. Haledon requested an overall increase of \$100,000 or 10.00%, which included the 4% interim increase already in effect.

On October 11, 2000, the LFB, in order to avoid having the Borough of Haledon incur a deficit currently or in the future, approved a \$40,000 increase in rates for water and fire service. The LFB determined that the increased rates should be interim for the year 2001 and ordered the Water Department to file a Petition with the New Jersey Board of Public Utilities seeking approval for a permanent rate increase.

On August 29, 2001, Haledon filed a Petition with the Board pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-5-12, seeking to make permanent the increase previously approved by the LFB. In addition to the 4% increase approved by the LFB for the period January 1, 2001 to December 31, 2001, Haledon sought Board approval for an additional 6% increase. Besides the Petitioner, the parties to this proceeding were the Board Staff, the Ratepayer Advocate and the Borough of North Haledon, which was granted Intervenor status.

On September 21, 2001, the matter was forwarded to the Office of Administrative Law ("OAL") as a contested case. On September 26, 2001, the Board issued an Order Suspending Increases, Changes or Alterations in Rates for Water Service until January 30, 2002. On November 1, 2001, North Haledon filed a Motion to Intervene and, on November 26, 2001, Haledon filed its Opposition to North Haledon's Motion to Intervene.

On December 19, 2001, the Board issued a second order suspending rates until May 30, 2002. Also in December, the Borough applied to the LFB and received approval for implementation of the additional 6% rate increase pending BPU approval of the permanent rate.

A prehearing conference was held by the ALJ assigned to the case at the Office of Administrative Law. At the prehearing conference a discovery schedule was established and evidentiary hearings were scheduled by Order dated February 14, 2002. On February 21, 2002, the ALJ granted North Haledon's Motion to Intervene. A public hearing was held on May 30, 2002, at the Haledon municipal building.

The Ratepayer Advocate filed the testimony of two expert witness on August 5, 2002. A settlement conference was held on September 9, 2002, but settlement efforts were unsuccessful. The evidentiary hearing was held on September 24, 2002. Initial and reply briefs were exchanged by the parties. As of January 2003, the matter awaits an Initial Decision from the ALJ.

STATEMENT OF FACTS The Ratepayer Advocate presented the testimony of its financial and engineering experts and, based on their analysis, supported the 10% rate increase requested by the Petitioner. Based on all the available information, it appears that Haledon's current rates are not sufficient for the water utility to run on a self-liquidating basis. Furthermore, the utility required the financial flexibility to institute capital improvements in the future. However, as conditions for approval of the rate increase, the Ratepayer Advocate made many detailed recommendation for strategies, both short and long term, through which Haledon could reduce operation expenses and address the pressing need to reduce the utility's lost and unaccounted for water ("UFW") through an aggressive metering and leakage

detection program. The Ratepayer Advocate recommended that, as a condition of approval of the requested 10% increase, that the Board also Order the Water Department to:

- Move aggressively to bring the meter testing and replacement program in the Borough of Haledon current with the testing program specified for Haledon's non-jurisdictional customers (i.e. North Haledon customers) in the BPU regulations. This would result in a consistent meter testing and replacement program for the customers served by the system
- Institute a program of annual testing of the PVWC meter at the Burhans Avenue interconnection;
- To the extent necessary, install flow detection bypass meters on all private fire service lines and make sure these meters are read on a regular basis. Unauthorized water use through fire service lines can be significant and adversely affects the UFW.
- Engage a qualified leak detection firm to conduct a complete leak survey of the entire distribution system. All valves at normally closed interconnections with other water systems should be sounded annually to be sure water is not flowing out of the Borough's system to other systems.

The Ratepayer Advocate also supported the establishment of a Purchased Water Adjustment Clause ("PWAC"). A PWAC permits a water purveyor to better administer and recover the expenses associated with purchased water supplies. This streamlined regulatory approach is designed to limit the costs associated with normal rate case petitions.

Once the ALJ's Initial Decision is issued, the parties will review and comment in the form of briefs to be submitted to the BPU. The BPU will consider the Initial Decision, the briefs and reply briefs, and the record before the ALJ, and make a final determination on the Petition during the first quarter of 2003.

C. WASTEWATER BASE RATE CASES

IN/OUT THE PETITION OF THE WALLKILL SEWER COMPANY FOR APPROVAL OF AN INCREASE IN RATES FOR SEWER SERVICE AND FOR THE ESTABLISHMENT OF PURCHASED SEWER TREATMENT ADJUSTMENT CLAUSE; BPU Docket Nos. WR02030193, WR 02030194, OAL Docket No. PUC 3919-02

The Wallkill Sewer Company ("Wallkill") is a public utility that operates and manages a sewer system within the Township of Hardyston, located in Sussex County. Wallkill serves approximately 257 customers within its service territory.

On March 21, 2002, Wallkill filed two Petitions with the New Jersey Board of Public Utilities ("Board" or "BPU") seeking approval for an increase in rates for sewer service and for a Purchased Sewerage Treatment Adjustment Clause ("PSTAC") to reflect the increase in the cost of sewerage treatment provided to Wallkill by the Sussex County Municipal Utilities Authority ("the Authority"), to be effective January 1, 2003. On August 30, 2002, Wallkill filed amended Petitions with the Board reflecting an increase in Wallkill's proposed total revenues to be derived from increased rates. Wallkill increased its proposed revenue figure from \$48,100 under the initial Petition to \$69,601 under the amended Petition. The new revenue figure represents an overall increase of 60.9%. Wallkill's proposal seeks to increase rates for a residential customer with a 5/8-inch meter size by approximately \$15.21 per quarter. For a customer with a 3/4 inch meter size, the increase is approximately \$22.82 per quarter, and for all other customers the increase will be approximately \$38.04.

Wallkill's amended PSTAC Petition did not contain any significant changes. The Adjustment mechanism requested by Wallkill would allow them to pass-through to consumers, on a dollar-for-dollar basis, the per gallon charge it pays the Authority for sewage treatment. Wallkill's Petition states that it incurs purchased sewerage treatment costs in excess of 75% of its total operating and maintenance expense. The Volumetric Treatment Charge to be imposed on consumers by Wallkill, is the pass through of costs for treatment of sewage by the Authority to consumers, based on the water readings of customers.

The Ratepayer Advocate is currently conducting a complete and thorough investigation of Wallkill's request for a rate increase to evaluate whether and to what extent an increase in rates is justifiable at this time. Detailed information has been requested from Wallkill about the purported need for the rate increase. Wallkill's request for PSTAC relief must also be evaluated. Wallkill has been sent detailed discovery requests seeking information regarding the charges from the Authority, and requesting Wallkill to justify its expenses and provide evidence to support its calculations. The Ratepayer Advocate is in the process of analyzing the data received from Wallkill and has engaged an expert financial witness to analyze and testify regarding various portions of the Company's proposal.

Among the areas the Ratepayer Advocate is examining closely are:

- Whether the data supporting the proposed rate increase are complete, consistent and accurate;
- Whether or not the Company's request is consistent with the law and the Board of Public Utilities policies and regulations;
- Whether or not the Company's proposal will allow the utility to provide safe, adequate and proper service at the lowest possible price;
- Whether or not the Company will be treating all of its customers consistently and fairly.

The Ratepayer Advocate will pursue all reasonable avenues to settle this matter in a fair and effective manner. Evidentiary hearings are scheduled for the end of January, 2003, and if settlement negotiations do not yield a result that is in the best interests of the ratepayers, the Ratepayer Advocate will proceed with litigation.

PURCHASED SEWER TREATMENT ADJUSTMENT CLAUSES (“PSTACs”)

A PSTAC is an accounting mechanism which permits the utility to recover only those costs for collecting and/or treating the sewerage it collects for its customers which are normally passed onto ratepayers. This is a limited proceeding and not as comprehensive as a base rate case which examines the total operations of a utility.

IN/VO THE PETITION OF ATLANTIC CITY SEWERAGE COMPANY FOR AN ADJUSTMENT TO ITS PURCHASED SEWER ADJUSTMENT CLAUSE; BPU Docket No WR01110798 OAL Docket No PUCRA 098-01S

The Atlantic City Sewerage Company operates a collection and transmission system. The Company does not treat the sewage or wastewater it collects from its customers, but the Company transmits the sewage to the Atlantic County Utilities Authority (“the Authority”) which treats the sewage and, in turn, bills the Company. The Company filed for authority to increase its Volumetric Treatment Charge from \$13.820 per Mcf to \$15.502 per Mcf in implementing the Adjustment Clause. The Company later revised its request to \$14.481 per Mcf.

The Adjustment Clause mechanism allows the Company to pass-through to consumers, on a dollar-for-dollar basis, the per gallon charge it pays the Authority for sewage treatment. Sewer utility charges to consumers are based on a customer’s water usage. The Volumetric Treatment Charge is the pass through of costs for treatment of sewage by the Authority to consumers, based on the water meter readings of customers. The increase to the Volumetric Treatment Charge by virtue of the Adjustment Clause provides no profits to the Company.

In December of 2001, the Authority introduced a budget that represents a decrease in its budget from the Authority’s prior year’s budget. For 2002, ACSC is being allocated \$6,651,799 of the Authority’s costs. In addition, ACSC will be credited \$329,510 relating to 2001 flows. Therefore, the net amount of the Authority’s costs allocated to ACSC in 2002 will be \$6,322,289. In 2001, ACSC was allocated \$7,128,902 of the Authority’s costs. In addition, ACSC was credited \$395,053 relating to 2000 flows. Therefore, the net amount of the Authority’s costs allocated to ACSC in 2001 was \$6,733,849. Accordingly the total 2002 allocation represents a decrease of \$411,560 or 6.11% over the 2001 allocation.

In addition to the Authority charges of \$6,322,289, the amount to be recovered by the ACSC in 2002 includes an under-collection of \$259,112 from 2001 and projected regulatory costs of \$9,000. Therefore, the resulting amount to be recovered from ratepayers during the 2002 PSTAC year is \$6,590,401. Given projected usage, the 2002 Volumetric Treatment Charge for 2002 is \$14.481 per Mcf, before compression. This is a decrease of 3.53% from the 2001 uncompressed rate of \$15.011 per Mcf. The 2001 rate was compressed to \$13.820 per Mcf due to an effective date of June 6, 2001. Therefore, the proposed 2002 rate, before compression, of \$14.481 per Mcf is an increase of \$0.661 per Mcf compared with the actual 2001 compressed rate.

The rate of \$14.481 per Mcf must then be compressed to reflect the fact that the PSTAC revenues will be recovered over a period of time shorter than the 12 month PSTAC year. In this case, the Company has proposed that the PSTAC will be effective as to service rendered from June 12, 2002 to December 31, 2002. Thus, the revenues must be collected as of June 12, 2002, rather than January 1, 2002, through December 31, 2002.

The Board's Order was effective as of June 12, 2002, meaning that the 2002 PSTAC will only be recovered over 203 days, rather than 365 days. As a result, the PSTAC charge for 2002 will be compressed to a charge of \$15.009 per Mcf.

A summary of these rates follows:

2001 Uncompressed Rate	\$15.011
2001 Compressed Rate	\$13.820
2002 Original Request	\$15.502
2002 Revised Request	\$14.481
2002 Compressed Rate	\$15.009

After settlement negotiations, the parties agreed that the appropriate increase to the average residential customer's bill should be 3.9%, or \$14.86 per annum, based upon 12.5 Mcf usage. The Board approved the stipulation on July 29, 2002.

D. WATER MERGERS & ACQUISITIONS

I/M/O THE JOINT PETITION OF NEW JERSEY-AMERICAN WATER COMPANY, INC. AND THAMES WATER AQUA HOLDINGS GMBH FOR APPROVAL OF A CHANGE IN CONTROL OF NEW JERSEY-AMERICAN WATER COMPANY; BPU Docket No. WM01120833.

The Joint Petitioners in this case are Thames Water Aqua Holdings GmbH ("Thames"), a wholly owned subsidiary of RWE AG ("RWE"), and New Jersey American Water Company ("NJAW"), a wholly owned subsidiary of American Water Works Company

("American"). RWE acquired Thames in March of 2000. In December 2000, Thames acquired E'town Co., the parent company that owns Elizabethtown Water Mount Holly Water, and Applied Water Management. In September, 2001, RWE entered into an agreement with American to acquire American and all of its subsidiaries, which include regulated utility operations in 26 jurisdictions (hereinafter called the "Transaction"). RWE agreed to pay \$46 per share for all the outstanding American stock, or \$4.6 billion, and to assume approximately \$3.0 billion in American debt. The overall Transaction is expected to be completed by March, 2003. If the Transaction closes, the American will become a subsidiary of Thames Holdings, a U.S. subsidiary of Thames.

Thames Holdings is a Delaware corporation with principal offices located at Two Stamford Plaza, Stamford, Connecticut. Thames Holdings is a wholly-owned subsidiary of Thames, a public limited corporation organized under the laws of England and Wales with its principal office located at 14 Cavendish Place, London, United Kingdom. Thames is the largest water and wastewater company in the United Kingdom and one of the largest water and wastewater companies in the world, providing water related services to over 21 million customers throughout the United Kingdom, Australia, China, Indonesia, Malaysia, Puerto Rico and Turkey.

RWE Ag is a large utility conglomerate, and the second largest energy company in Germany, with core utility businesses in the electric, gas and water industries, as well as natural resource development. RWE is based in Essen, Germany. RWE acquired Thames Water in March 2000. As a result of this transaction, American and its subsidiaries will become wholly owned subsidiaries of Thames.

The representatives of Thames, American and NJAW have stated that the merger of all of the regulated New Jersey utility operations will be proposed as the next step in their business plan. The present proceeding does not include a proposal to consolidate the two water utility companies. This proceeding is a petition for BPU approval of a corporate stock acquisition in which American Water Works will have a new corporate parent, namely RWE. E'town and NJAW expect to be filing base rate cases immediately following this transaction. At the same time, the two companies will also file a petition to merge the two utilities into one company. The Joint Petitioners expect to have E'town and NJAW operating as one utility by July 2004.

The parties in this proceeding included the Joint Petitioners, the Ratepayer Advocate, the Staff of the Board of Public Utilities, the Manasquan Customers Group, the Township of Maplewood, the City of West Paterson, and the local union representatives of the Union Workers Union of America, A.F.L.-C.I.O., and the National Conference of Firemen and Oilers SEIU. The unions agreed to a separate settlement of their issues in April. The only active parties remaining in the hearing process and settlement negotiations were the Joint Petitioners, Board Staff and the Ratepayer Advocate. The Manasquan Customer Group attended one settlement meeting and submitted one technical condition they require to support a settlement. The parties negotiated settlement terms throughout the summer. Evidentiary hearings were conducted in late August before Commissioner Butler, and settlement negotiations resumed immediately following the evidentiary hearings.

The Ratepayer Advocate had concerns regarding the following:

- C Status of the operations of Thames and RWE in other jurisdictions in which it owns water utilities, specifically, their track record on:
 - C water quality issues;
 - C operational issues;
 - C environmental violations;
 - C customer relations;
 - C layoffs due to down-sizing.
- C Status of the corporate headquarters of American and NJAW, both currently located in New Jersey
- C No transaction costs associated with the acquisition passed on to New Jersey ratepayers
- C The Joint Petitioners must demonstrate “positive benefits to ratepayers” not merely “no harm to ratepayers” including:
 - C Possible reduction of customer rates or refunds to customers;
 - C No adverse impact on water service;
 - C Maintain reservoir buffer lands, protection of watershed;
 - C No employee layoffs in NJ;
 - C Reasonable access to books and records of Thames.

Hearings were held before the Hon. Commissioner Frederick M. Butler on August 12, 13, 19, 20, and 22, 2002. The Ratepayer Advocate presented the testimony of several expert witnesses and proposed numerous conditions designed to protect the customers of NJAW from any deterioration in the water quality or the service provided by the Company, as well as conditions to prevent any improper corporate behavior on the part of the new owners. After the evidentiary hearings concluded, the parties resumed negotiations. However, an issue in contention was the inability of the parties to agree on the structure, timing or amount of merger savings. The Joint Petitioners refused to acknowledge that merger savings would result from this transaction and that those savings should immediately be given to the customers of NJAW.

MERGER SAVINGS

After intensive negotiations, however, the parties eventually agreed to a merger savings figure of \$3 million. The total merger savings amount of \$3 million is more than seven times the merger savings (\$400,000) realized in the previous stock acquisition proceeding involving Thames/RWE and Elizabethtown Water. The parties have further agreed that the \$3 million in merger savings will be allocated as follows: \$1 million to the Department of Education, to be disbursed at the discretion of the Commissioner; and \$2 million to be

returned to the customers of New Jersey American in the form of a one-time bill credit. The \$1 million contribution to the Department of Education, which was forwarded to them in December, 2002 by the Ratepayer Advocate, could only have been achieved through a settlement with the Joint Petitioners. Furthermore, the customer-allocated \$2 million is still five times the amount realized in the Thames/RWE-E'town merger case (\$400,000).

OTHER KEY MERGER CONDITIONS

The settlement also included the following conditions for approval:

1. No merger or transaction costs (which include legal or investment banking fees, consulting fees, retention or change in control bonuses, accounting reports and audits, due diligence reviews), will be passed on to or funded by NJAW customers; nor will any acquisition premium be passed on to or pushed down to NJAW customers. Transaction costs are currently estimated to be \$150 million;
2. No layoffs of any employees of NJAW through the later of March 31, 2004, or one year after the close of the Transaction, except for cause. Thames also agreed to honor all existing collective bargaining agreements for the remaining term of those agreements. Thames also agreed that there would be no diminution in the value of any pensions or other benefits enjoyed by employees. These conditions were all accepted by the unionized labor representatives, the Union Workers Union of America, A.F.L.-C.I.O., and the National Conference of Firemen and Oilers SEIU, which have endorsed the merger and recommended approval of the Transaction.
3. For a minimum of three years following approval of the Transaction, a majority of the individuals of the NJAW Board of Directors will be New Jersey residents, and familiarity with New Jersey interests will be an important consideration in the appointment of any new directors.
4. All books and records of NJAW will be kept in New Jersey, and the corporate headquarters of NJAW and American will remain in Haddonfield and Voorhees, respectively;
5. All the regulated New Jersey operating utilities of the Joint Petitioners will maintain and expand their existing low-income programs.
6. NJAW customers will be protected from any of RWE's nuclear or fossil fuel liabilities, including environmental remediation liabilities, or any credit or bond rating downgrades that might occur as a result of those liabilities.

7. Numerous financial and audit commitments, including English language, US dollar, US accounting standards, and New Jersey access to books and records, are among the many detailed requirements;
8. New customer service measurements, including quarterly reports to the BPU and Ratepayer Advocate, of NJAW's customer service performance; and a commitment by Thames that its other regulated New Jersey utilities will meet or exceed the higher of their existing or the new NJAW customer service measures;
9. The cost of capital will decline, and those cost savings will be passed on to customers, and NJAW will maintain or enhance its current level of capital investment in the water supply infrastructure of its operating units.
10. NJAW customer privacy will be protected, and no confidential customer information will be sold or exchanged with other companies.

This Stipulation was approved by the Board of Public Utilities on November 20, 2002.

PENDING MERGERS & ACQUISITIONS AS OF DECEMBER 2002

I/M/O THE PETITION OF NEW JERSEY-AMERICAN/ANDERSON WATER SYSTEM FOR APPROVAL OF THE SALE OF THE WATER SYSTEM; BPU DOCKET NO. WM02020064

The Township of Mansfield owns the Anderson Water System, a small water utility serving approximately 65 customers within the Township. The Anderson Water System consists of three water supply wells, approximately 3.6 miles of 6" and 8" water mains and gate valves, nine fire hydrants, a 300,000 gallon steel standpipe, and 91 service connection (51 are active). The Township's original cost investment in these facilities is approximately \$912,135. Since the Township does not have its own licensed operator, it has contracted with New Jersey-American to operate and maintain the water production and delivery system. Mansfield pays New-Jersey American \$6,500 per month, or approximately \$10 per customer, to operate the system. The remainder of the Town's approximately 8,000 residents do not receive service from the Anderson Water System. They are served either by private wells, by Diamond Hill Water Company, or by Hackettstown Municipal Utilities Authority.

On January 31, 2002, New Jersey-American filed a Petition with the Board requesting approval for the transfer of assets from the Township to New Jersey-American and for granting municipal consent to New Jersey-American for the franchise area served by the Anderson Water System. The Petition also requests authority for New Jersey-American to apply its presently-approved depreciation rates to the Anderson Water System assets. The parties to the case include New Jersey-American Water, Anderson Water, Board of Public Utilities Staff, and the Ratepayer Advocate.

The matter was not transferred to the Office of Administrative Law because the parties all anticipated a stipulated resolution of this matter.

Apart from the legal requirements imposed on transfers of assets and franchises, such transfers must also meet a public interest standard. That is, at a minimum, neither Anderson Water System's customers nor New Jersey-American's customers should be any worse off following the acquisition. In previous utility merger cases before the Board, the Ratepayer Advocate has advocated an even higher standard known as the "positive benefits test". Under this more restrictive standard, New Jersey-American would have to show that both sets of customers will receive positive benefits from the acquisition that would not have been available in the absence of the acquisition. The financial transaction also raises ratemaking issues where, as here, the purchase price does not reflect net original book cost of the assets to be transferred.

Because the Anderson Water System serves only 65 customers, the Township cannot justify carrying a staff of its own to operate and maintain its water treatment, storage and delivery facilities. The Township's 65 customers will not experience a rate increase as a result of the acquisition. On March 28, 2001, the Township adopted a set of service rates that are

identical to New Jersey-American's presently effective rates. Thus, New Jersey-American will be able to charge its Board approved state-wide rates without imposing a rate change on Anderson's customers. All the rate issues except one were resolved during settlement negotiations among the parties.

The only rate question left unresolved is the regulatory treatment of the negative acquisition adjustment that arises in the transaction. The Board requires regulated utilities, including New Jersey-American, to follow original cost accounting. Thus, New Jersey-American will record the original book cost of the Anderson facilities in its plant accounts. The difference between that original cost and the \$226,000 purchase price will be recorded as a negative acquisition adjustment. The ratemaking question that arises is whether the acquisition adjustment should be reflected in New Jersey-American's rate base. The Ratepayer Advocate recommended that the acquiring utility's rates should reflect the lower value of either market cost (ascertained through arm's length transactions) or original cost (i.e., depreciated book value). In this case, the market value of Anderson's assets is well below the underlying book value, as evidenced by the three competitive bids that the Township received. Therefore, the lower market value should be reflected in rates by including the negative acquisition adjustment (\$370,242) as a reduction to rate base. In this way, New Jersey-American's earnings will be restricted to a return on only the capital it actually invested in Anderson assets.

The Ratepayer Advocate position is consistent with prior Board actions in similar matters, and will likely be incorporated into a final settlement. It is anticipated that Board approval of the proposed acquisition will be granted in the first quarter of 2003.

E. RULEMAKINGS

UTILITY ACQUISITION RULEMAKING; BPU Docket No.: WX99080527

On August 18, 1999, the BPU initiated a Notice of Rule Pre-Proposal for rules governing the acquisition of water and wastewater systems. The Notice specified the BPU's intent to propose a rule governing the procedures and requirements with which a utility must comply if it seeks to acquire a water or wastewater system and seeks ratemaking treatment on such an acquisition. The BPU also stated that the rules governing the ratemaking treatment of acquisitions should be developed to effectuate the goals of consolidating smaller water and wastewater systems and regionalizing systems and supplies to ensure the provision of safe, adequate and proper service at just and reasonable rates to all customers.

To assist interested parties in responding to the proposed rule, the BPU developed a series of questions which were published in the notice. The questions in the pre-proposal were structured around six primary areas of inquiry:

- * background information, including actions in other jurisdictions;

- * information as to the appropriate timing of Board evaluation of acquisitions, and rate treatment of acquisition adjustments;
- * data as to the economic incentives involved in acquisitions;
- * information as to appraisals and the structure and nature of any appraisals;
- * information as to the standards by which to evaluate the reasonableness of an acquisition and acquisition adjustment; and
- * information as to categorizing acquisitions and any thresholds for review as well as rate treatment.

On November 4, 1999, the Ratepayer Advocate submitted its comments regarding the pre-proposed rule. On April 18, 2000, an acquisition rulemaking meeting was held with all interested parties. BPU Staff distributed draft rules. Despite continued time and attention, and further exchange of comments, the rules remain in draft form as of December, 2002. However, many of the principles and strategies contained in the draft rules have been tested in various transactions that have come before the Board, and the Ratepayer Advocate and the Board continue to further consider the process of evaluating utility acquisitions.

F. WORKING GROUPS

PRIVATE FIRE LINES GENERIC TARIFF WORKING GROUP

This non-docketed, generic tariff proceeding began as a response to a dispute between a water utility and a school board over the utility requirement that the school take and pay for an extra water service line and meter dedicated to the school's fire suppression sprinkler system. Numerous interested parties have participated in technical, legal, and surety discussions over the past two years. The Ratepayer Advocate has stated that customers, not the water utility, should choose what service they should take and pay for. This position is consistent with the position of the Department of Community Affairs ("DCA"), which administers the building codes in New Jersey.

In the spring of 2002, the Board Staff circulated to the many groups involved in this process a proposed generic tariff that permits customers to utilize existing service lines for the water needed for fire suppression systems, subject to certain reasonable conditions (e.g. hydraulic limits, backflow prevention devices, etc.). The unofficial practice in the water industry has allowed the utilities to determine how many and what kind of service lines a customer seeking to install private fire protection must have. (For example, one line for potable water and a separate line for the sprinkler system.) The Department of Community Affairs opposes this unofficial current practice and supports the proposed generic tariff, with only minor comments.

The Ratepayer Advocate supported the Staff's proposed generic tariff. However, support was not unanimous, and further revisions have been circulated. In September, 2002, the water purveyors reiterated their opposition to the proposed generic tariff. No further discussions have been held, and the generic tariff will need to be finalized in 2003.

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE; BPU Docket No.: WO99120926

On December 22, 1999, the BPU authorized the formation of a Working Group to evaluate a Distribution System Improvement Charge ("DSIC") for water and wastewater utilities. The DSIC, as proposed by the water industry, would be a means to facilitate the acceleration of infrastructure improvements by applying a percentage surcharge to each customer's utility bill outside of a base rate case. The DSIC would allow New Jersey utilities to implement a surcharge on a quarterly basis to recover the fixed costs of utility plant construction projects completed and placed in service between rate cases. The DSIC is equivalent to an automatic rate increase every quarter for utility customers.

On January 4, 2000, notice of the Working Group was provided to all interested parties. On February 14, 2000, BPU Staff sent out data requests to elicit the respective parties positions on this issue. On March 13, 2000, the Ratepayer Advocate submitted its responses to Staff's data requests.

The first meeting of the Working Group was convened on March 10, 2000. At this initial meeting two working sub-groups were formed - a Technical subgroup and a Policy/Legal subgroup. A tentative schedule was also established. The interested parties met again on March 23, 2000 to discuss substantive issues. In response to the positions put forth by the Ratepayer Advocate in opposition to the DSIC proposal at this meeting, BPU Staff suspended all future meetings of the DSIC Working Group and Subgroups. Staff ordered the Working Group to be suspended "...until Staff receives the necessary information demonstrating the threshold need for, and the compelling public interest to be served by, DSIC."

The DSIC Working Group has been held open, but no action was taken during 2002. The Ratepayer Advocate has continued an open dialogue with utility representatives on the subject as circumstances warrant, and will once again take an active role in this policy initiative should the Working Group be revived in the coming year.

BPU-INITIATED PROCEEDING TO ADDRESS SUMMER 2002 DROUGHT CRISIS

The BPU initiated a non-docketed working group in the Spring of 2002 to address the financial implications of various initiatives to address the drought crisis. The Ratepayer Advocate engaged financial and engineering consultants, and developed a number of options. As a result of the drought, the drought emergency declaration, and the drought restrictions, many water purveyors experienced below-average financial returns for 2002. These results

for the industry as a whole were exacerbated by some of the unusual steps taken to alleviate more severe conditions in certain parts of the state. For example, the northeastern part of the state was faced with such a severe potential shortfall in water supplies that Lake Hopatcong was prepared as an emergency reservoir. In Newark, the interconnection at Virginia Street was opened and used to transfer water from the Raritan Basin to the Passaic and Wanaque systems. The Newark transfer, in particular, created the prospect of large bills owed to Elizabethtown Water Company without resolving who would pay (or even be able to pay) these bills.

Circumstances like the Newark transfers and others provided the impetus for a series of meetings among industry representatives, the BPU, the Ratepayer Advocate and other interested parties. The dialogue was collegial and productive, and many interesting proposals were circulated throughout the summer. However, before a working document of proposals could be distributed, changes to the drought conditions reduced the urgency for implementing proposals. By the end of 2002, the Ratepayer Advocate had prepared to continue working on various drought contingency plans. Despite the recently improved water supply conditions, recent years have shown that drought conditions reappear rapidly, and in 2003 the Ratepayer Advocate will urge the renewal of these discussions to assist New Jersey in being prepared for future drought emergencies.

VI. REPORT ON PUBLIC ADVOCATE DESIGNATE (PAD) MATTERS

Since Governor McGreevey announced his attention to recreate the Department of the Public Advocate and named Seema Singh Public Advocate Designate in February 2002, she has received more than 150 requests in writing and many many more by telephone, fax and e-mail from individuals and groups seeking assistance with specific problems. They originate in every county in New Jersey and from other jurisdictions and represent most racial and ethnic groups in the state. They are on behalf of professionals and not-for-profit organizations concerned with public policy and individuals seeking help with individual problems. In addition, she has received many requests for assistance for constituents from local, state and federal legislators. A detailed report of the requests of assistance from the Public Advocate and their disposition is available upon request.

Selected Problems Resolved by the Public Advocate Designate

Some examples of problems from individuals or from legislators to the Public Advocate Designate, investigated and resolved include:

- ! Complaints about the practices of a Bergen County Tour operator referred to the NJ Commerce and Growth Commission for review of the tour operator's functioning.
- ! Complaints by more than one legal permanent resident alleging that the Dept. of Motor Vehicles was abusing its discretion in respect to Road Test Waivers for New Jersey licenses to Indian applicants who held valid licenses from India which is a member of the United Nations Convention on Road Traffic ratified by the United States. These complaints alleged racial and ethnic discrimination in the exercise of discretion in the issuance of such waivers and further alleged that these complaints had been previously ignored in the past Administration. They were referred to the Department of Motor Vehicles Services (DMV). After investigation at the Commissioner's instructions, the DMV has expressly changed its policies so that its discretion to grant eligible Indian drivers waivers will be exercised under the same criteria as all other applicants.
- ! Requests by concerned state residents for investigation of abusive conduct toward Chinese-American and other non-white customers by Atlantic City Casino Personnel, referred to and being investigated by the Office of the Attorney General.

- ! An inquiry from a homeowner whose property was flooded in Essex County as to the rights and responsibilities of the Federal Emergency Management Agency (FEMA) when overflow from local water bodies damaged his property. He also sought information on the respective responsibilities of homeowners and local, county and state agencies under such circumstances.
- ! Requests for assistance from a Union County homeowner whose house had burned down and had been unable to get certification from the water company that the meters had been removed so the burned shell could be demolished and the house rebuilt.
- ! Request for assistance from a Monmouth County couple complaining about the billing practices of MCI World Com wireless services (not regulated in New Jersey)
- ! Request for assistance from a retirement community in Middlesex County for action from the utility and municipal officials concerning defective street lighting caused by wiring problems that were causing public safety hazards for the retirees.
- ! A referral from a state Senator from a Mercer County constituent seeking information about New Jersey's local telephone services and Verizon, the incumbent local exchange carrier.
- ! Letter from a Mayor in Cape May County complaining about and asking for an explanation of increasing cable rates 2 times the rate of inflation when the Federal Communications Act of 1996 was adopted on the theory that deregulation would bring prices down.

Some Issues that should be investigated by the Department of Public Advocate

Some examples of requests for action which the Public Advocate Designate unfortunately does not yet have the resources to investigate properly but are in the public interest include:

- ! A request for a Bill of Rights for residents of Assisted Living Residential facilities for the elderly.
- ! A request from a group of Hudson County residents alleging that the state current provider systems of emergency medical and emergency transfer services is obsolete, does not accommodate state population increases and has insufficient paramedic providers and units.

- ! A Monmouth County practicing psychologist has asked the Public Advocate to undertake an investigation into the availability of mental health services offered to low income people through managed care plans.
- ! Complaints from Ocean County and elsewhere concerning available assistance and housing for developmentally disabled state residents and allegations of abuse in county run facilities.
- ! Requests for an investigation of state facilities covered by Medicare from Mercer County arising from the treatment of an elderly mother. When the concerned daughter complained to the Peer Review Organization of New Jersey about her mother's treatment by the physician in the facility, she was advised that they could not review her mother's treatment "because the physician has not responded to (their) request for consent to release (their) findings."
- ! Fact finding on whether local school boards are providing developmentally disabled students adequate and thorough educations.

Other Public Advocate Designate Activities

The many activities in which the Public Advocate Designate have participated since her appointment while also serving as Ratepayer Advocate, include other responsibilities than responding to the many letters and calls seeking assistance from individuals and legislators on behalf of their constituents. It should also be noted that support and presentations on various issues have also been requested by many community and not-for-profit groups as well. For example:

- ! After meetings with representatives of Citizen's Action of an analysis was prepared of Predatory Mortgage Lending National and State strategies in connection with Assemblymen Hearn, Van Drew, Stanley and Cohen's Assembly Bill #75, The New Jersey Home Ownership Security Act of 2002, to control abusive lending practices and land flipping which have lured unsuspecting low income homebuyers into borrowing against equity in their homes as a way to consolidate debts, causing loss of property, and excessive mortgage loans that are equity based rather than income based and financed by inflated closing fees

and points leading to default and loss of homes, many of them by elder citizens.

- ! Meetings with the President of AARP and staff to discuss the development of a binding of Bill of Rights for residents in Assisted Care Facilities discussed above. This project was brought to the Public Advocate Designate's attention by an elderly resident of such a home in the New Brunswick area who had been unsuccessful in getting public attention to this very useful proposal. It is anticipated that when the Department of Public Advocate, Division of Elder Advocacy is established the Public Advocate Designate will continue to consult with and work with her on the Bill of Rights . This project will be among the earliest priorities of the Department.
- ! After meetings with Renee Steinhagen, Esq. of the Public Interest Law Center of New Jersey and Marilyn Askin, Esq., President of AARP on the pending sale of the Non-profit Memorial Hospital of Salem County to the Salem Corporation, a for-profit subsidiary of Community Health System, Inc. a Tennessee based corporation. It was brought to the attention of Commissioner Lacy, Dept. of Health and Senior Services. This first sale in New Jersey of a general acute care hospital to a for profit entity under the Community Healthcare Assets Protectors Act (CHAPA) could have a significant impact on the healthcare resources of Salem County and may not provide the needed services, previously provided by the hospital. Among the concerns arising from the proposed sale is whether the profit making entity intends to meet the charitable needs of the Salem Community and whether the conversion of public health assets to private ones is in the public interest. This issue is still unresolved as of December 2002.
- ! The Public Advocate Designate also drew the attention of Dr. Lacy to the need to carefully consider the impact on public health of the possible conversion of Blue Cross/Blue Shield, a not-for-profit corporation and its services to an investor owned corporation is currently being considered.
- ! The Public Advocate Designate, was invited to join with John E. Harmon, the President of the Metropolitan Trenton African American Chamber of Commerce, Dr. Henry Johnson CEO and Publisher of the City News Publishing Company and other distinguished members of the African American, Asian American and Hispanic American professional and business communities

to participate in the planning of a Minority Business Summit in association with the Governor's Office, The Dept. of Commerce and other relevant governmental and industrial entities.

- ! Many presentations were given on behalf of the Governor, and the Public Advocate Designate to constituent and professional groups throughout the state, and at conventions elsewhere in the nation at their request.

These very few examples of requests for assistance received do not adequately reflect the diversity and complexity of the many requests for assistance received by the Public Advocate Designate. A professional staff and other institutional resources are needed to appropriately address them on behalf of the public interest.